

NAIC Model #275: The NAIC's Best Interest Standard for Annuity Transactions

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Agenda

- The Environment for Annuity Regulations
- Best Interest Standard and Producer Obligations
- Insurer Requirements
- Safe Harbors
- Producer Training

The Environment for Annuity Regulations

- Trend of shift from “salesperson” to that of advisor or financial consultant due to:
- Greater consumer service and personalization expectations
- Increase specialization in the financial services industry
- Changing financial needs and goals as more and more consumers step into retirement
- The introduction of more sophisticated-and complex-financial products
- Growing consumer reliance on outside financial advice and guidance
- More options to address consumer financial requirements and objectives (not all of which would be appropriate for a given consumer)

The Environment for Annuity Regulations

- In 2017, the National Association of Insurance Commissioners (NAIC) established a working group to review and if necessary, revise long-standing Suitability in Annuity Transactions Model Regulation.
- The Department of Labor had already redefined its definition of retirement plan investment advice which extended the formal obligation of fiduciary duty to many insurance producers (Vacated in 2018).
- Around same time, SEC began efforts to heighten standards of conduct for broker-dealers and associated persons which resulted in Regulation Best Interest in 2019-broker dealers and registered representatives must act in the best interest of the customer when recommending a product purchase or investment strategies.
- In 2020, NAIC enacted new revisions to Model #275 (Suitability in Annuity Transactions Model Regulation) to include a “best interest of the consumer” conduct requirement. (Not a fiduciary standard)
- Effective 1/1/2023 for Hawaii

Best Interest Standard



Best Interest Standard

- Care Obligation:
- Know the consumer's financial situation and objectives
- Understand your own available product offerings
- Have a reasonable basis to believe your recommendation effectively addresses the consumer's needs
- Communicate the basis of the recommendation to the consumer, preferably in writing
- Replacements-must consider whole transaction and whether replacing product will substantially benefit the consumer over the life of the product

Best Interest Standard

- Disclosure Obligation:
 - Provide Producer Disclosure Form to the consumer prior to any recommendation. Retain a signed copy of the form and leave one with the consumer.
 - If requested by the consumer, disclose more information about your compensation, which can be expressed by a range or percentage.

Best Interest Standard

- Documentation Obligation:
 - Document a written record of any recommendation you make as well as the basis for that recommendation (even if recommendation does not result in a sale)
 - Maintain any information collected from the consumer, disclosures made to the consumer (including summaries of oral disclosures), and any other information used in making the recommendation.

Best Interest Standard

- Conflict of Interest Obligation:
 - Consider any potential conflicts of interest that could influence the impartiality of your recommendation.
 - Either identify and avoid or manage and disclose the conflict(s) to consumer. As a best practice, if you have a question whether a financial interest is a conflict, disclose it to the consumer.

Best Interest Standard

- The obligation to evaluate and assess product features does not extend beyond the types of products the producer is authorized and licensed to sell or recommend.
- Does not require that the annuity with the lowest one-time or multiple occurrence compensation schedule necessarily be recommended
- Does not require the producer to assume ongoing monitoring obligations (unless this obligation is owed separately under the terms of an advisory or consulting agreement with the consumer).
- Does not require that the same importance or significance be given to every factor involved in a product analysis.
- Does not create or require a fiduciary obligation with the consumer.

Best Interest Standard

- No obligation to consumer if:
- No recommendation is made.
- Recommendation was made that was later found to have been based on materially inaccurate information provided by the consumer.
- The consumer refused to provide relevant profile information, and the transaction is not recommended.
- The consumer decides to enter into an annuity transaction that is not recommended by the producer.

Insurer Requirements

- Must establish and maintain supervision procedures:
- To inform producers of the requirements of the regulation
- Provide product and consumer best interest training for producers
- That confirms consumer profile information to identify and deter submission of inaccurate information
- That ensures producers provide the necessary and required information to consumers before annuity issue
- That identify and eliminate any sales contest, sales quotas, bonuses, and non-cash compensation based on specific annuity sales within a limited period of time
- Must provide written report to senior management regarding the effectiveness of its supervision system

Safe Harbors

- Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under the 2020 Model Regulation.
- Example-Broker-dealer and registered representatives follow SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales including Regulation Best Interest
- Example-investment advisers following the fiduciary duties and requirements imposed by contract under the Investment Advisors Act of 1940 including Form ADV

Producer Training

- All previous product and CE training requirements survive in the new NAIC Model #275.
- If you already completed required state 4-hour annuity training course in the past (prior to 12/31/2022), then a one credit training course on appropriate sales practices, replacement, and disclosure requirements under the newly amended NAIC #275.
- For producers who obtain license after 12/31/2022, a new 4-hour training course incorporating the new NAIC #275.
- Producers licensed prior to 12/31/2022 have until 7/1/2023 to take one-hour course. Otherwise, producers must take new 4-hour course.
- Compliance with another state's training requirements similar to this requirement will be deemed to be in compliance with Hawaii's requirements.

Insurance Producer Disclosure for Annuities

APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES

Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____

Business/Agency Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

National Producer Number in [state]: _____

CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to you in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- Fixed or Fixed Indexed Annuities
- Variable Annuities
- Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any noninsurance financial products that I am licensed and authorized to provide advice about or to sell.

- Mutual Funds
- Stocks/Bonds
- Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from: _____	

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

Commission, which is usually paid by the insurance company or other sources. If other sources, describe: _____

Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

Other (Describe): _____

If you have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

Drafting Note: This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.

Drafting Note: The acknowledgement and signature should be in immediate proximity to the disclosure language.

By signing below, you acknowledge that you have read and understand the information provided to you in this document.

Customer Signature

Date

Agent (Producer) Signature

Date

Consumer Refusal to Provide Information

APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are you being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company needs information about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets your needs, objectives and situation. You may lose protections under the Insurance Code of [this state] if you sign this form or provide inaccurate information.

Statement of Purchaser:

I **REFUSE** to provide this information at this time.

I have chosen to provide **LIMITED** information at this time.

Customer Signature

Date

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It

Why are you being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of [this state].

Customer Signature

Date

Agent/Producer Signature

Date

Any Questions?

Thank you!

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