



New Revisions to the NAIC Suitability in Annuity Transactions Model Regulation

On Monday November 16, 2009, the NAIC's Suitability of Annuity Sales (A) Working Group issued a new draft of the Suitability in Annuity Transactions Model Regulation. The November 16, 2009 draft makes changes based upon industry comments on the September 4, 2009 draft and also adds new provisions.

Revisions Based Upon Industry Comments:

The November 16, 2009 draft includes a number of revisions in response to industry comments. While some of the changes may be welcomed by the industry, other changes may have not moved in the direction that the industry had hoped. These revisions include:

- Removing the definition of and all references to "qualified staff."
- Adding a provision that requires an insurer, as part of its supervision system, to monitor and, as appropriate, audit performance of the suitability functions contracted out to a third party and obtain an annual certification from a senior manager of the third party that the contracted function is properly performed. A similar method for ensuring that a third party is performing its obligations is currently contained in Section 6.D.(4) of the Suitability in Annuity Transaction Model.
- Adding Section 8.C. which gives the commissioner the discretionary ability to reduce or eliminate any applicable penalty for violation of the Suitability Regulation if (i) corrective action is taken promptly after a violation is discovered and (ii) the insurer had reviewed and approved the issuance of the annuity using the new "selection process" of Section 6.G.(1)(e)(i), discussed below. Thus, if an insurer has an automated process for determining which annuity sales are subject to further staff review, it may mitigate the penalties that may be assessed.
- Revising Section 6.G.(1)(e)(i) to require insurers to maintain "reasonable procedures for review of each recommendation, including each insurance producer recommendation, that are reasonably designed to ensure that there is a reasonable basis to determine that a recommendation is suitable." The Section allows the use of an electronic selection process to identify recommendations to be reviewed and

provides that only those recommendations selected need to be reviewed to satisfy the requirement.

- Requiring producers to have product specific training in order to have adequate knowledge of the product being recommended. In addition, producers must complete a four credit general training course on various annuity topics and insurers must verify completion of the course prior to allowing producers to sell the respective insurer's products.

Newly Added Language:

- Holds an insurer ultimately responsible for (i) compliance with the Suitability Regulation, (ii) any violation by action or inaction by the insurer or its insurance producer, and (iii) taking appropriate corrective action. (New Section 6.C.).
- Requires insurance producers, or insurer representatives where no insurance producer is involved, to keep a record of any recommendation made that is subject to a suitability determination. (New Section 6.F.).
- Requires insurers to "maintain reasonable procedures to detect recommendations that are not suitable." (New Section 6.G.(1)(f)). The November 16, 2009 draft states systematic customer surveys, interviews, confirmation letters, and internal monitoring programs as examples of what may be considered a "reasonable procedure."
- Changes the application of the requirement that an insurer maintain reasonable procedures for examination of its insurance agencies to "its insurance producers and their affiliated insurance agencies." This raises the question of whether audits of producers are required.
- Excludes from the exemption of the Suitability Regulation recommendations to an individual plan participant regarding an annuity. This exclusion parallels FINRA Rule 2821(a)(1).

The November 16, 2009 draft will be discussed at the Suitability of Annuity Sales (A) Working Group's November 24, 2009 conference call.

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