



Regulatory Guidance on the Suitability in Annuity Transactions Model Regulation

On March 9, 2010, the Life Insurance and Annuities (A) Committee shared its draft "Regulatory Guidance" on the revised Suitability in Annuity Transactions Model Regulation that is being considered by the Executive Committee and Plenary during the NAIC 2010 Spring meeting. The Regulatory Guidance was developed by the (A) Committee Chair, Commissioner Thomas R. Sullivan (CT), and Vice Chair, Commissioner Adam Hamm (ND), "to assist in uniform enforcement" of the Suitability Regulation. The Guidance "is not an official pronouncement of the NAIC but rather an unofficial statement" by the chairs intended to provide assistance in answering questions "likely to arise after the model regulation has been adopted."

The Regulatory Guidance makes clear that the Suitability Regulation (i) holds insurers responsible for ensuring that annuity transactions are suitable regardless of whether the insurer contracts with a third party to supervise or monitor the recommendations made, and (ii) requires producer training on the provisions of annuities in general and the specific products they are selling. The Regulatory Guidance highlights certain aspects of the Suitability Regulation including:

- The insurer or producer must make **reasonable efforts** to obtain the consumer's suitability information prior to recommending an annuity to the consumer. (Section 6A and B) (emphasis added).
- An insurer's issuance of an annuity is to be reasonable under all circumstances actually known to the insurer. (Section 6D).
- Insurers are required to develop a system of supervision designed to achieve compliance with the Suitability Regulation. While insurers are permitted to contract with third parties to implement their systems of supervision, the insurer's supervision system must include supervision of the contractual performance of the third party, including monitoring and, as appropriate, conducting audits, to ensure that the contracted functions are properly performed. The insurer must also annually obtain a certificate from a senior manager with responsibility for the contracted function that states the manager has a reasonable basis to represent, and in fact does represent, that the function is being properly performed. (Section 6F). Broker-dealer third parties can comply with the Suitability Regulation by subjecting fixed annuity sales to the FINRA suitability and supervision rules. However, since FINRA does not have authority to

- enforce its rules on the sale of fixed annuities, broker-dealers supervising fixed annuity sales may be subject to more intensive insurance examinations. (Section 6H).
- Producers must have adequate product specific training and must comply with ***the insurer's standards for product training*** prior to soliciting an annuity product. (Section 7A) (emphasis added).

The Regulatory Guidance also addresses remedies and penalties for violating the Suitability Regulation by explaining:

- Insurers are responsible for any unsuitable annuity transactions - regardless of whether it is due to the action or inaction of the insurer or the producer and regardless of whether the insurer contracts with a third party to supervise or monitor the recommendations made. This means an insurer must take reasonably appropriate corrective action for any consumer harmed.
- The Suitability Regulation is not intended to require punitive penalties and sanctions when the commissioner has determined that a penalty is not appropriate such as when there is only a single violation and no evidence of a pattern of conduct.

For more information, please contact Ann Black at ay@jordenusa.com or (305) 347-6859, Steven Kass at sk@jordenusa.com or (305) 347-6899 or Sarah Jarvis at saj@jordenusa.com or (305) 347-6803.

JORDEN BURT is a national law firm with a unique focus on financial services and a national reputation in high stakes litigation, financial regulation and product counseling.

If you do not wish to receive these alerts, please use the link in the lower lefthand corner of this email or send an email with "REMOVE" in the subject line to: info@jordenusa.com. This alert does not constitute legal or other professional advice or services by JORDEN BURT LLP and/or its attorneys.

[Unsubscribe](#)

[Update Profile](#)

This email was sent by: **Jorden Burt LLP**
1025 Thomas Jefferson St., N.W. Washington, DC, 20007, USA