

The NAIC's model regulation will be required in some states next month, and there are some new guidelines about Documentation and Disclosure Obligations that you should know about. Before you recommend or sell an annuity, you need to have your clients fill out a disclosure form and keep it in your client files. Carriers will be performing audits in the future to make sure that these forms are being completed. To help you stay compliant with the new suitability model regulation, we've provided several resources you can utilize:

- [Understanding the New Documentation and Disclosures Flyer](#) explains exactly what you need to do to follow the new Documentation and Disclosure Obligations.
- [Sample Disclosure Form](#) can be used with your clients and follows the requirements set by the updated suitability rule.
- [NAFA Suitability White Paper](#) provides more details about the Document Obligation and the new best interest standard.
- [The Importance of Client Files Flyer](#) breaks down what to include in every client file and why it's necessary.

Understanding the Documentation and Disclosure Obligations

As states adopt best interest standards based on the NAIC's model regulation, it's important that you understand how these guidelines affect how you do business and the new requirements for your client files. In September, we sent a communication about the updates on the best interest standards and the four obligations for financial professionals within it. Today, we're focusing on the Documentation and Disclosure Obligations, and how they pertain to you and your client files.

For more information on the updated suitability model regulation and each of the four obligations, [click here](#). Specifically, the Disclosure Obligation requires that financial professionals provide the client with the following information, prior to the recommendation or sale of an annuity:

1. The role you play in the transaction, and the scope and terms of the relationship you have with the client
2. The types of products you're licensed and authorized to sell
3. Whether you're appointed with multiple insurers and indicate whether it's:
 - a. One insurer
 - b. Two or more
 - c. Two or more, but primarily contracted with one insurer
4. A description of how you get paid:
 - a. Commission
 - b. Fee
 - c. Other

5. A notice indicating that you will provide additional information to the client, if requested, regarding cash compensation:
 - a. A reasonable estimate that can be provided using a range of amounts or percentages
 - b. The frequency and amount of the compensation which can be provided using a range of amounts or percentages.

In addition, the Disclosure Obligation requires you to have a full understanding of your client's needs. You must have a reasonable basis to believe that your client has been informed of all the features of an annuity, prior to the sale. This includes, but is not limited to fees, expenses, and limitations.

Many carriers are opting to add an agent attestation section to their suitability forms to validate that the financial professional has met the Disclosure requirements. Most carriers plan on relying on the attestation as confirmation of the Disclosure Obligation being fulfilled. However, the responsibility for disclosure to the client falls primarily on the financial professional.

A key point to note is that the carrier attestation does not satisfy your obligation, as the financial professional, to the updated rule.

The disclosure form, signed and dated by both you and your client, must be included in the client file. A copy of the disclosure should also be left with the client. Carriers have indicated that they will perform audits to ensure these

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forms are being completed and retained by financial professionals. The form will be required to be produced in the event of an audit and/or complaint. Additionally, these forms will be required by state and federal regulators during an investigation. Missing forms could subject you to fines and possible disciplinary actions.

For your convenience, we have provided a [sample disclosure form](#) that can be used with clients. This form follows the requirements set forth by the updated suitability rule and can be retained in your client files to fulfill your requirement under the updated regulations.

Any documentation regarding the solicitation, recommendation, or sale of a product should be kept within your client files to fulfill the Documentation Obligation. This includes all illustrations, applications, and, as previously discussed, disclosure forms. For more details about the Documentation Obligation, review the new best interest standard [here](#).

For more information on the importance of client files, [click here](#).

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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 Phone: _____ Business Email: _____

National Producer Number: _____ 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 Stock/Bonds Certificates of Deposits

Whose Annuities Can I Sell to You? I am authorized to sell:

Annuities from only one (1) insurer Annuities from two (2) or more insurers

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 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.

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



A CHANGING REGULATORY LANDSCAPE FOR ANNUITY TRANSACTIONS

Best practices for meeting the new best interest standard for fixed annuity sales

Fixed annuities play a vital role in helping consumers provide for their own financial security in retirement. As market disruptions make abundantly clear, fixed rate and fixed indexed annuities are useful tools for accumulating assets, managing risk, and creating a guaranteed lifetime income stream. Fixed annuities should be considered a valid part of a prudent retirement and financial management plan for some portion of a consumer's assets.

All fixed annuity stakeholders share a critical objective: to protect consumers. Throughout much of the past two decades, the annuity industry has operated under a regulatory regime that ensured this consumer protection through a suitability standard, requiring insurers and producers to make suitable annuity recommendations based upon relevant information obtained from clients so that those clients' financial needs and objectives at the time of the transaction were appropriately addressed.

However, in a regulatory environment that included a new Department of Labor "fiduciary rule" and efforts by the Securities and Exchange Commission (SEC) to apply a best interest standard on broker-dealers, the National Association of Insurance Commissioners (NAIC) convened a working group to review and revise its suitability model regulation. On February 13, 2020, the National Association of Insurance Commissioners (NAIC) adopted heightened consumer protections to be applied to the sale or recommendation of an annuity. Under the revised standard, producers are required to **act in the best interest** of the consumer when making the recommendation, and insurers are required to establish and maintain a system to supervise such recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are **effectively** met.

This paper discusses the best interest requirements for fixed annuity sales and offers guidance in shaping the development of best practices for annuity professionals in meeting this new standard.


2003

NAIC Model Regulation 275: Suitability in Annuity Transactions – A Brief History

The NAIC first adopted a model regulation addressing the activities of insurers and producers when making recommendations to consumers to purchase annuity products in **2003**, with the adoption of the Senior Protection in Annuity Transactions Model Regulation (#275). This original model regulation was narrowly focused to protect individuals aged 65 and older. It had also been a common practice for state insurance regulators to address consumer protection through their respective state's Unfair Trade Practices Act.



2006

In **2006**, the NAIC revised this model regulation to expand the regulation's suitability protections to consumers of all ages — not just those 65 years or older. Given this expanded scope, the name of the model regulation was changed to Suitability in Annuity Transactions. As its name implied, the standard in recommending the purchase of annuity required a producer — or an insurer where no producer was involved — to have reasonable grounds to believe the recommendation was *suitable*, based on the facts disclosed by the consumer and the consumer's financial situation and needs.

Although the model did not define suitability information, producers were required to make reasonable effort to obtain information pertaining to the consumer's financial situation, tax status, and investment objectives, along with any other information that the producer used or considered in making the recommendation. For insurers, these early models required that they have a system of supervision in place that was reasonably designed to ensure suitable sales — and allowed insurers (with some additional oversight requirements) to outsource that supervision system to a third party.

2010

Four years later, in **2010**, the NAIC adopted significant amendments to the suitability model regulation. Broadly, the 2010 revisions clarified and expanded insurer supervision requirements; defined suitability information to include a list of 12 data points to be collected from the consumer and considered by the producer prior to making an annuity recommendation; required both general annuity suitability training and product-specific training for producers prior to soliciting the sale of an annuity; and created a "safe harbor" provision, allowing that sales made in compliance with FINRA suitability requirements would be deemed to satisfy the requirements outlined in the NAIC model regulation.

In addition to the annuity professional's duty to have a reasonable basis for the determination of a suitable recommendation, the 2010 model imposes a duty upon the insurer to maintain a system of supervision for a secondary suitability review of every annuity application prior to issuing the policy. Furthermore, the liability of any sale deemed unsuitable is placed squarely on the insurer. Even if the insurer contracts with a third party, such as a distribution partner, to provide a system of supervision for the secondary review of each application, the insurer is not relieved from the liability of an unsuitable sale.

2017

In **2017**, the NAIC Life Insurance and Annuities (A) Committee once again established a working group with the charge to review and revise, as necessary, the suitability model regulation. At the time, there was a great deal of focus by policymakers, consumer advocates, regulators, and industry stakeholders on what should be the appropriate standard of care for financial professionals serving the investment, savings, and retirement needs of retail customers. The U.S. Department of Labor's fiduciary rule was already partially in effect and had survived a number of legal challenges in the federal district courts; meanwhile, the SEC was working on the creation of a uniform best interest standard of care for registered investment advisers and broker-dealers, pursuant to a directive under Dodd-Frank. It was in this environment that state insurance regulators turned toward revising the suitability standard for annuity transactions.



2020

The NAIC Annuity Suitability Working Group worked over the course of over two and a half years to review and revise the 2010 model regulation, finalizing its changes on December 19, 2019. The full (A) Committee approved the changes on December 30, and, on February 13, **2020**, the NAIC Executive (EX) Committee and Plenary formally adopted a revised Suitability in Annuity Transactions Model Regulation¹ that replaced the old suitability principles with a new best interest standard to be met for annuity transactions.

The New Best Interest Standard for Annuity Transactions

As set forth in the first section of the revised model regulation, the purpose of the regulation is to require producers² to act in the best interest of the consumer when making an annuity recommendation and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of the consumer at the time of the transaction are effectively addressed. The Purpose section goes on to state that nothing in the regulation should be construed to create or imply a private cause of action, nor to subject a producer to civil liability under either the new best interest standard of care or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Applicability of the regulation is on any sale or recommendation of an annuity and the application of the best interest obligation is on any producer who has exercised material control or influence in the making of the recommendation and who has received direct compensation as a result of the recommendation or sale, regardless of whether the producer had direct contact with the consumer.

Duties of Producers – The Best Interest Obligation

Under the best interest obligation, when making a recommendation of an annuity and under the circumstances known at the time the recommendation is made, ***a producer must act in the best interest of the consumer without putting the producer's or the insurer's financial interest ahead of the consumer.***

A producer complies with the best interest requirement by satisfying four obligations: **Care, Disclosure, Conflict of Interest, and Documentation.**

The specific duties related to each of these four obligations are described in the following pages. NAFA has highlighted language that is new to the 2020 Model Regulation.

¹The NAIC kept the name of the model regulation as "Suitability in Annuity Transactions" in order to maintain the exemption for certain annuities from the Securities Act of 1933 and continued confirmation of state regulatory authority provided under Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection act of 2010. In order to continue this annuity "safe harbor" provision, states must adopt any successor regulation that exceeds the requirements of the 2010 Suitability in Annuity Transactions Model Regulation. Even though this is no longer a suitability standard, by keeping it so named it meets the Dodd-Frank requirement of it being a "successor regulation," and the 2020 model includes a Drafting Note stipulating that.

²A "producer" is defined as a person or entity required to be licensed under state law to sell, solicit or negotiate insurance, including annuities. For the purpose of this regulation, a producer includes an insurer where no producer is involved.



1. CARE OBLIGATION

A producer, when making an annuity recommendation, must exercise reasonable diligence, care, and skill in doing all of the following:

1. Know the consumer's financial situation, insurance needs and financial objectives;
2. Make a reasonable inquiry regarding the annuities that are available to the producer and have an understanding of those available recommendation options;
3. Have a reasonable basis to believe the recommendation option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer's profile information; and
4. Communicate to the consumer the basis or bases for the recommendation.³

In order to satisfy the above requirements of the Care Obligation, producers must also:

- ✓ Make reasonable efforts to obtain the consumer profile information* from the consumer prior to making the recommendation.
- ✓ Consider the types of products the producer is authorized and licensed to sell that would address the consumer's financial situation, insurance needs and financial objectives.
 - o This does not require the producer to analyze or consider any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.
 - o Producers are held to standards applicable to producers with similar authority and licensure.
- ✓ Have a reasonable basis to believe the consumer would benefit from certain features of the annuity (such as annuitization, death or living benefit; or other insurance-related features).

The 2020 Model Regulation's Care Obligation further describes certain conditions and caveats related to these requirements, including:

- Requirements under the Care Obligation do not create a fiduciary obligation or relationship and only create a regulatory obligation.
- The factors generally relevant in making a determination regarding an annuity recommendation — such as the consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features — may vary depending on the facts and circumstances of a particular case, but each factor may not be considered in isolation.

³ The communication to the consumer regarding the basis or bases for the recommendation may be made either orally or in writing; however, under the Recordkeeping requirement in the 2020 Model Regulation, producers are required to maintain a record of the disclosures made to the consumer, including summaries of any oral disclosures.



- The requirements of the Care Obligation apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of the purchase or exchange and any riders or similar product enhancements.
- Satisfaction of the Care Obligation does not mean that the annuity with the lowest compensation structure shall necessarily be recommended.
- Producers do not have ongoing monitoring obligations under the Care Obligation (unless such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer).
- Producers are not required to obtain any license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance, including, but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation — provided the producer does not give advice or provide services that are otherwise subject to securities laws or otherwise engages in activities requiring other professional licenses.

CONSUMER PROFILE INFORMATION

As set forth under the Care Obligation, a producer must know the consumer's financial situation, insurance needs and financial objectives. Having this knowledge requires producers to make reasonable efforts to obtain the consumer's profile information prior to making the recommendation. Under the revised 2020 Model Regulation, there is a 14-point definition of "consumer profile information," the majority of which were included in the 2010 Model's "suitability information."

- | | |
|--|--|
| (1) Age; | (9) Existing assets or financial products, including investment, annuity, and insurance holdings; |
| (2) Annual income; | (10) Liquidity needs; |
| (3) Financial situation and needs, including debts and other obligations; ¹ | (11) Liquid net worth; |
| (4) Financial experience; | (12) Risk tolerance, including, but not limited to, willingness to accept non-guaranteed elements in the annuity; ³ |
| (5) Insurance needs; ² | (13) Financial resources used to fund the annuity; and |
| (6) Financial objectives; | (14) Tax status. |
| (7) Intended use of the annuity; | |
| (8) Financial time horizon; | |

¹ The inclusion of a consideration of a consumer's "debts and other obligations" is new to the 2020 Model Regulation.

² "Insurance needs" is new to the revised model; it was not included in the 2010 suitability information.

³ The reference here to a "willingness to accept non-guaranteed elements in the annuity" is a new piece of information that a producer must make reasonable efforts to obtain in order to make a determination of whether the annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives. "Non-guaranteed elements" are newly defined in the 2020 Model Regulation to mean the premiums, credited interest rates (including any bonuses), benefits, values, dividends, non-interest based credits, charges, or elements of formulas used to determine any of these are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.



The Care Obligation as it relates to an exchange or replacement of an annuity:

In the case of an exchange or replacement of an annuity, the requirements under the 2020 Model Regulation are similar to the 2010 version, requiring the producer to take into consideration whether:

1. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (e.g., death, living or other contractual benefits), or be subject to increased fees, investment advisory fees, or charges for riders or product enhancements;
2. The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and
3. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months. (NOTE: The 2010 model is 36 months.)

2. DISCLOSURE OBLIGATION

The Disclosure Obligation is the second of the four obligations that a producer must satisfy in order to act in the best interest of the consumer. The new disclosure requirements are set forth in the body of the 2020 model regulation and are also included in a new appendix to the regulation (Appendix A – “Insurance Agent (Producer) Disclosure for Annuities) that must be co-signed and dated by both the producer and consumer. The Model Regulation requires states to adopt a form that is substantially similar to **Appendix A**, and the producer is required to “prominently disclose” the information contained in the appendix to the consumer.

Prior to the recommendation or sale of an annuity, the producer must disclose the following:

1. A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
2. A description of the types of products that the producer is licensed and authorized to sell;
3. Whether the producer is authorized, contracted/appointed, or otherwise is able to sell insurance products from:
 - a. One insurer;
 - b. Two or more insurers; or
 - c. From two or more insurers, although primarily contracted with one insurer.
4. A description of the sources and types of cash and non-cash compensation the producer will receive for the sale of the annuity, including if by:
 - a. Commission as part of a premium or by other remuneration received from the insurer, intermediary, or other producer;
 - b. By fee as a result of a contract for advice or consulting services; or
 - c. Other.



5. A notice of the consumer's right to request additional information regarding the cash compensation. If the consumer so requests, the producer must also disclose:
 - a. A reasonable estimate of the amount of cash compensation to be received, which may be expressed as a range of amounts or percentages; and
 - b. Whether the cash compensation is a one-time or a multiple-occurrence amount. If it is a multiple-occurrence amount, the producer must disclose the frequency and the amount of the occurrence, which may be stated as a range of amounts or percentages.

Finally, the Disclosure Obligation requires that, prior to the time of the recommendation or sale of an annuity, a producer must have a reasonable basis to believe the consumer has been informed⁴ of various features of the annuity including the following:

- The potential surrender period and surrender charge;
- The potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity;
- Mortality and expense fees;
- Investment advisory fees;
- Any annual fees;
- Potential charges for and features of riders or other options of the annuity;
- Limitations on interest returns;
- Potential changes in non-guaranteed elements of the annuity;
- Insurance and investment components; and
- Market risk.

3. CONFLICT OF INTEREST OBLIGATION

The Conflict of Interest Obligation is the third of the four obligations under the new best interest standard. Under this obligation, producers are required to “identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.”

The regulation does not elaborate on what might be considered reasonable management of a material conflict of interest. However, a “material conflict of interest” is defined as a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation, but cash compensation and non-cash compensation are not considered a material conflict of interest.

⁴ The 2010 version of the Model Regulation requires the producer to have a reasonable basis to believe the consumer has been reasonably informed.



4. DOCUMENTATION OBLIGATION

The Documentation Obligation — the final obligation that must be satisfied in order to comply with the best interest standard — includes three requirements, the latter two of which are tied to two (additional) new forms that must be signed by the consumer (and co-signed by the producer), if applicable.

At the time of the recommendation, a producer must:

1. Make a written record of any recommendation and the basis for the recommendation;
2. Obtain a customer-signed statement, on a form substantially similar to **Appendix B**, documenting:
 - a. A customer's refusal to provide the consumer profile information; and
 - b. The customer's understanding of the ramifications of not providing his or her consumer profile information – or, providing insufficient consumer profile information; and
3. Obtain a customer-signed statement, on a form substantially similar to **Appendix C**, acknowledging the annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

Both the Disclosure and the Documentation Obligations come into play under the 2020 Model Regulation's Recordkeeping requirement, which, for producers, requires maintenance of records for a specific time period (which varies, depending upon the state) of the information collected from the consumer (including information related to the consumer profile and, now, copies of the executed appendices); disclosures made to the consumer, including summaries of any oral disclosures; and other information used in making the recommendation that was the basis for the annuity transaction.

Duties of Insurers Related to Supervision

- (1) Except where a transaction is not based on a recommendation, insurers may not issue an annuity unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives, based on the consumer's profile information.
- (2) Insurers must establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producer's compliance with the regulation. Insurers are required to establish and maintain:
 - a. Reasonable procedures to inform its producers of the requirements of the regulation, which shall include the incorporation of the requirements of the regulation into relevant producer training manuals;
 - b. Standards for producer product training and reasonable procedures to require its producers to comply with the regulation's producer training requirements;
 - c. Product-specific training and training materials that explain all material features of its annuity products;
 - d. Procedures for the review of each recommendation prior to issuance of the annuity designed to ensure that there is a reasonable basis to determine the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives;



- e. Reasonable procedures to detect recommendations that are not in compliance with the Care Obligation, Transactions Not Based on a Recommendation, Prohibited Practices,⁵ and the Safe Harbor provision;⁶
- f. Reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided the required information to the consumer;
- g. Reasonable procedures to identify and address suspicious consumer refusals to provide the consumer profile information;
- h. Reasonable procedures to identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation based on the sales of specific annuities within a limited period of time.⁷

As is the case under the 2010 model regulation, insurers must provide an annual report to senior management regarding the efficacy of the supervision system, any exceptions found, and corrective action taken or recommended — although now the regulation specifies that the annual report must be written.

Insurers are still able to contract with third parties for the supervision system, and all obligations pertaining to the contractual performance (e.g., monitoring, auditing when appropriate, and certification of the performance) are unchanged. Insurers are still ultimately responsible for compliance regardless of whether the supervisory functions are contracted out.

Finally, an insurer is not required to include in its supervision system a producer's recommendations of products other than those annuities offered by the insurer, which is the same as the 2010 version. But, the 2020 model regulation also excludes from the insurer's required system of supervision consideration of or comparison to any other options available to the producer or the compensation relating to those other options.

An Expanded Safe Harbor

The 2010 version of MDL 275 provides that sales made in compliance with FINRA suitability and supervision requirements satisfy the requirements of the regulation. The revised 2020 model regulation expands that "safe harbor" to "all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue." Financial professionals include registered broker-dealers and registered representatives of a broker-dealer; registered investment advisers and investment advisers representatives associated with a registered investment adviser; and ERISA or IRC plan fiduciaries. Insurers are still required to have a reasonable basis to believe that the annuity would effectively address a particular consumer's financial situation, insurance needs, and financial objectives, but such an analysis may be based on the information provided from either the financial professional or the professional's supervising entity.

⁵ The 2020 Model Regulation makes no substantive changes to the requirements pertaining to either Transactions Not Based on a Recommendation or the Prohibited Practices sections in the 2010 version of the rule.

⁶ The procedures that an insurer may use to detect non-compliant recommendations include confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring. Insurers may apply such methodologies and/or confirmation techniques to detect non-compliant recommendations after issuance or delivery of the annuity.

⁷ It is noted that this is not intended to prohibit employee benefits (such as health insurance, office rent, office support, retirement benefits, etc.) as long as the benefits are not based upon volume of sales for a specific annuity within a limited period of time.



Producer Training Requirements

The revised model regulation maintains all requirements in the 2010 model regulation pertaining to producer training but adds some additional new training to cover education related to the new best interest standard of conduct. Producers must now complete training regarding the appropriate sales practices and requirements of the amended regulation within six (6) months after the regulation's effective date.

If producers have already completed the one-time, four-credit course required under the 2010 version of the regulation, they may either take a new four-hour course that would incorporate the new standard of conduct or take a one-time one (1) credit training course specific to the changes set forth in the amended regulation.

Enforcement of the Revised Regulation

As the NAIC Annuity Suitability Working Group deliberated about making changes to the 2010 model regulation, they did so with the thought that there should be harmonization, where possible, with other regulatory regimes across the financial services industry; nevertheless, a priority was to ensure that the regulation remain insurance focused. The revised model regulation makes this clear, explicitly stating that the authority to enforce compliance with the regulation is vested exclusively with each state's insurance commissioner.

Recordkeeping

The 2020 revised model regulation is largely similar to the 2010 version; however, new to the model regulation's recordkeeping requirements is that producers must now maintain records pertaining to the disclosures that they made to the consumer, including records that summarize any oral disclosures. Here, if a producer has communicated to the consumer the basis or bases for the annuity recommendation verbally (as is allowed under the Care Obligation), he or she must, as part of the recordkeeping requirements, document a summary of that oral disclosure. Similarly, a summary of an oral disclosure to the consumer of the various features of the annuity (required by the Disclosure Obligation) should also be documented and maintained. In terms of the length of time that records must be maintained and made available to the state insurance commissioner, the 2020 model continues to provide individual state authority to determine the required time period. And, insurers are still allowed, if they choose, to maintain documentation on behalf of a producer.

Conclusion

NAFA believes that annuity professionals should — and do — act in the best interest of their clients when making a recommendation to purchase an annuity, and believes that such a standard helps to ensure that the insurance needs and financial objectives of their clients are effectively met. Indeed, the exceedingly low rate of agency administrative actions against producers and the exceedingly high customer satisfaction rate for fixed annuities bears this out. We have endorsed the adoption of best interest rules that provide meaningful and effective consumer protections, while preserving access to annuity products and that support those who manufacture, distribute, and sell these critical retirement and financial planning products. NAFA promotes best interest rules that are process based and that establish a workable, consistent, and objective regulatory framework that producers and insurers can rely upon for compliance.



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 Phone: _____ Business Email: _____

National Producer Number _____ 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:

Annuities from only one (1) insurer Annuities from two (2) or more insurers

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.

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



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 _____ if you sign this form or provide inaccurate information.

Statement of Consumer/Purchaser:

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

CONSUMER SIGNATURE

DATE



APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

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 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:

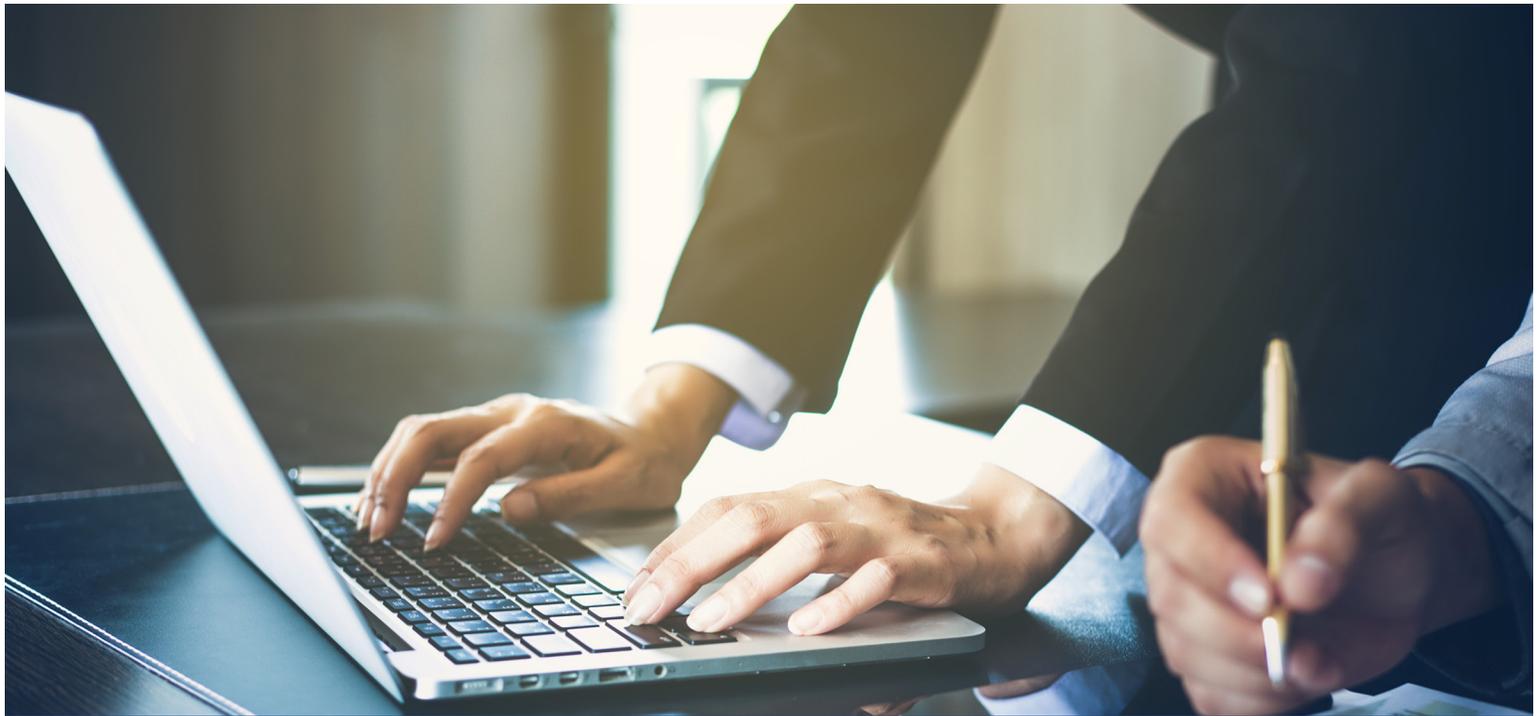
I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of _____.

CUSTOMER SIGNATURE

DATE

AGENT/PRODUCER SIGNATURE

DATE



One of Your Business's Most Important Properties is Your Client Files

Incomplete, insufficient, or non-existent client files not only expose you to potential regulatory fines, but could also result in lawsuits. One way to help protect yourself is to keep detailed, easily accessible documentation for each of your clients so—if a carrier or regulator asks to see your client files—you're prepared.

Things to keep in the client file

The basic guidelines below may be considered as standard practice across the industry; however, this is not an all-inclusive list. Since each carrier's requirements for client documentation can vary, you should check with each of your carriers regarding their specific requirements. You should also be familiar with the state regulations that apply to you.

- Documentation from any conversations with the client regarding the solicitation of the sale, the basis for the recommendations provided and issuance of the policy. This includes any follow-up client conversations after policy issuance.
- Copies of any advertising or sales materials, including but not limited to brochures, seminar

invitations and materials, workbooks, etc., used during the sales process.

- Suitability information that was used as the basis for your recommendation.
- Any illustrations used during the sale of the product.
- All product recommendations, including the product selection tool or method used, and all corresponding notes and paperwork used to make the recommendation.
- Application for the product and any additional forms required by the carrier.
- If applicable, a signed delivery receipt.

The devil is in the details

When it comes to documenting your discussions with clients, this idiom couldn't be truer. It's critical to keep meticulous notes regarding client meetings—right down to the smallest detail. The better you document the discussions you have with clients—including any products you've discussed—the better off you may be.

Think of it this way: “If there isn’t documentation, then it didn’t happen.” This perspective emphasizes the importance of keeping your client file detailed and current.

How long should you retain documents?

A general rule of thumb is to keep all active clients’ records throughout the duration of the policy plus three years, and keep inactive clients’ records for three years after the date of becoming inactive. This allows you access should you need it during a regulatory audit. Again, carrier requirements and state regulations may vary regarding retention time frames so be sure you are familiar with the retention periods that pertain to you.

Remember, safeguarding your clients’ information is your responsibility.

This information is intended for Financial Professionals who are insurance licensed only. If you are securities licensed please contact your Broker Dealer for their requirements.

These educational pieces are intended to be informative and provide generalized guidance. They should not be construed as legal advice or provide protection against compliance violations brought on by a consumer or state insurance commission. It is the sole responsibility of the financial professional to seek compliance or legal direction specific to their individual situation. These pieces should be used as a means to raise awareness and evaluate business practices.