July 31, 2019

Submitted electronically to jmatthews@naic.org

TO: Members of the Annuity Suitability Working Group
Director Jillian Froment, Ohio Department of Insurance
Chair, Annuity Suitability Working Group

Contact: Kim O'Brien, FACC Spokesperson & Americans for Annuity Protection, Vice Chair
kim@fixedannuitychoice.com 414-332-9312

Re: Section 6 A (1) (d)

Dear Members of the Annuity Suitability Working Group

We wish to follow up on an important issue considered in this week's phone call concerning the Care Obligation and ask for reconsideration.

We hope not to strain the patience of the Working Group, but we are perplexed by the decision to remove section 6 A (1) (d). While admittedly we were the only interested party to speak in favor consistent with our previously submitted written comments, the justification for removing this provision was unclear and only a handful of working group members spoke out on this issue such that we are left to wonder if the matter was sufficiently considered given the implications of removing such important language.

We wonder too if it is even clear what was decided. Was the decision to remove the entire section or select wording highlighted on the agenda. The agenda identified only an excerpt from the section in question – i.e., "reasonable for an ordinary producer in a similar circumstance to recommend." But this section contains other critical elements including clarification agents would only be compared to other agents with similar authority and licenses. Thus, we are left wondering what exactly was decided and why.

As you know by our comments, we support the standard put forward by Iowa in Section 6 A (1) (d), or something similar, because it provides a benchmark for determining what is meant by so many other undefined and open-ended terms like "best interest", "best suited", "care", "skill", "diligence" etc. The inherent challenge facing this rule is its use of entirely subjective words with no defined meanings. In absence of clarification or definition, a provision as Iowa proposed is imperative. The provision establishes a standard that any judgement about whether a producer has met the rule's requirements will be made by reference to what is reasonable for the ordinary producer in a similar circumstance and with similar authority and licensing, while also recognizing it is not necessarily the case "a majority of all insurance and investment professionals could agree that the recommended option was the single best option."

During the meeting it was noted the requirements of producers are expressed, albeit vaguely, elsewhere under the Care Obligation, but that doesn't answer by what standard regulators will determine if an agent acted with requisite skill, care and diligence. We fear if it is not made clear that insurance agents are to be compared only to other insurance agents, as opposed to being compared to investment advisers or perhaps higher level fiduciaries such as trust officers or ERISA managers, then this rule is rendered even

more subjective and approaches a kind of strict liability depending on how regulators (or courts) decide to enforce these new ill-defined requirements. The standard that makes the most sense for making a determination of compliance is comparison to a similarly licensed insurance professional but the rule is open to other interpretations absent an explicit standard.

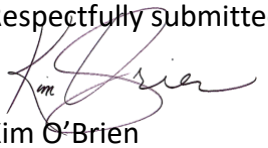
We are particularly baffled by those who say – in support of the rule – such a standard is not needed because "this is more art than science" and thus it would be difficult from a compliance standpoint to say whether other producers would or would not have made the same recommendation. They go even further, saying this is "more aligned with litigation than a regime based on supervision and regulation." We hope regulators fully absorb those comments and understand that is saying whether a sale is in the best interest of a consumer can only be resolved through a battle of experts in a courtroom and does not lend itself to regulation. If that's true and, ironically, we agree with them, then it makes our very point as to why this should not be a regulation in the first place. However, if the NAIC proceeds with this rule, then objective standards are needed so regulators have some point of reference when deciding whether an agent did or did not do what is required of them.

Let us be clear. We have never been supporters of a best interest standard. We think it does not lend itself to regulation and will turn quickly into a litigation trap. We think these very debates prove the rule is far too subjective and carries these risks. Nonetheless, if the rule goes forward, we believe it should stipulate that the standard for meeting the care obligation is one of reasonableness as applied to an ordinary producer. Words can be changed to "peer professional" or "insurance professional" to capture other concerns, but the litmus test must be against what others with similar profiles might have done. Beyond that it must be made explicit that insurance agents will only be compared to other insurance agents and not held to standards required of securities brokers, investment advisers, trustees, or other kinds of fiduciaries. This is the only way to ensure the rule is workable and applied fairly as possible.

We believe the rule must be made as objective as possible so insurers and producers will understand exactly what is expected of them and so regulators will know how to determine adherence and compliance. Our impression is many on the Working Group share this view and this concern even formed the basis for a request for comment. However, it seems the working group took a step backward in any quest for objectivity by removing a provision designed specifically to provide some guideposts on how conduct will be judged under this rule. We urge the Working Group to reconsider this. At a minimum, we would ask that the substance of our concerns addressed through Section 6 A (1) (d) be considered and incorporated into other sections of the draft proposal.

Thank you for your consideration of our concerns.

Respectfully submitted,



Kim O'Brien