Independent Insurance Agents and Brokers of America
National Association of Health Underwriters

July 12, 2019

The Honorable Jillian Froment
Chair, Annuity Suitability Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Comments Concerning "Conflict of Interest" and "Care Obligation" Provisions

Dear Director Froment:

On behalf of the Independent Insurance Agents and Brokers of America (IIABA) and the National Association of Health Underwriters (NAHU), we write in response to the Annuity Suitability Working Group's recent request for comments concerning the so-called "conflict of interest" and "care obligation" provisions of the group's draft. Our organizations collectively represent hundreds of thousands of insurance producers, and our members would be the stakeholders most affected by any revisions to the *Suitability in Annuity Transactions Model Regulation.* We appreciate having the opportunity to comment on these important topics and look forward to participating in the upcoming conference call meetings of the working group.

Initial Comments

The questions presented to interested parties seem to be premised on the notion that the revisions proposed by the Iowa Insurance Division in its May 30 letter have been embraced by the working group and perhaps even operate as the current text. While no such decision was formally announced during the recent interim meeting, we ask for clarification on this point and also feel compelled to note our strong opposition to the Iowa proposal. That draft attempts to mirror the framework of the SEC's Regulation Best Interest by establishing an amorphous and ambiguous best interest standard that has a series of subparts (i.e. care, disclosure, conflict of interest, and documentation obligations) that utilize the same titles and headings used in the SEC rule. Instead of using the Iowa proposal, we urge the working group to utilize its November 2018 draft as the base text and make the necessary revisions to that document.

Our organizations' views about foisting a best interest standard of care on the agent community and extending a securities-specific rule to insurance products are well-known, but we believe the Iowa proposal misses the mark for additional practical reasons. First, it embraces a company-centric view that focuses on those large institutions that offer both insurance and securities products. This perspective does not take into account the impact such a proposal would have on tens of thousands of small agents that sell a range of different insurance products to the residents of their local communities. This proposal would not alter the customer experience or benefit consumers, but it would impose new costs and legal liability on producers who lack the financial and legal resources of their larger company counterparts. Second, there are many differences between the insurance and securities sectors, and the rules that apply to these industries will inevitably have differences as well. This is entirely appropriate, and the working group should not try to arbitrarily replicate the elements of Regulation Best Interest as it revises the NAIC model. The big financial institutions that operate in both spaces have elected to do so, recognize that the

rules in the two sectors will not be identical, and possess the resources to achieve compliance with the evolving regulatory frameworks of both. Third, the Iowa proposal will not produce the consistency that these large institutions purportedly seek. Many jurisdictions will opt not to adopt such a controversial and troubling proposal, and any vague and subjective measures of this nature that are enacted (which will generally require legislative action in states) will be interpreted in conflicting and inconsistent ways from state to state, court to court, and regulator to regulator. While the Iowa proposal may be a well-intentioned effort to move the debate forward, it creates more problems than it resolves.

Section 6(C)(5) / Conflicts of Interest

We welcome the working group's focus on Section 6(C)(5), a confusing and unclear requirement previously added to the draft without any meaningful discussion last year. This provision would require producers to disclose "material conflicts of interest," a term that is defined elsewhere to mean "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." IIABA and NAHU oppose this provision in its current form for numerous reasons, and we are especially concerned that it does not clearly identify what must be disclosed and puts agents in the untenable position of trying to deduce what information must be provided to a customer.

The working group's request for comments asks about the circumstances in which a producer would have a material conflict of interest in an annuity transaction. Conflicts of interest in this context are rare, especially since insurance producers typically are compensated exclusively by commissions paid by insurers and do not possess an agent-principal relationship with consumers. A conflict would arguably arise, however, in situations in which a producer is receiving compensation for the same services in the same transaction from both a customer and an insurance company and has not disclosed this fact to the purchaser. This uncommon scenario is already addressed by the working group's November 2018 draft, which would require disclosure of compensation from insurers.

In some ways, your request for comments poses the wrong question, and a better way to approach this discussion is to consider whether there are meaningful and relevant types of information that should be provided to consumers in the course of an annuity transaction. Framing compensation disclosure and related requirements as a "conflict of interest obligation" is an unhelpful distraction that will result in disputes and a lack of uniformity, and we urge the rejection of such unclear, subjective, and misleading terminology. There is no need or rationale for framing or packaging these issues in this way, and there are only downsides in doing so.

The working group appears to support the idea that any requirements placed on the agent community should be clear, objective, and understandable to those that will be obligated to comply with them. In order to achieve this result, we urge the working group to reject the unworkable approaches proposed by some (including the "conflicts of interest" framework employed by the SEC) and to plainly identify the information that must be disclosed to consumers in an annuity transaction. Other elements of the draft would already require producers to make disclosures about their role and relationship to the consumer, the cash and non-cash compensation they expect to receive, and whether they only offer proprietary products. If there are additional pieces of information that regulators believe should be provided to consumers, then the model should identify these items and specifically require their disclosure.

Some regulators have suggested that producers should also be required to disclose any material ownership interests in the insurer issuing the annuity contract. This outcome can easily be achieved by (1) eliminating Section 6(C)(5) in its current form and (2) replacing it with a new

provision that would require agents to provide customers with "a description of any material ownership interest the producer has in the insurer that would issue the recommended annuity or any parent, subsidiary, or affiliate of that insurer."

Care Obligation

Question 1 – Should the care obligation of a producer include "prudence?

IIABA and NAHU are very concerned with the subjective and unclear nature of certain elements of the draft, and deleting the reference to "prudence" in Section 6(A)(2)(a) would be an improvement.

Question 2 – Is this ("reasonable for an ordinary producer in a similar circumstance to recommend") an appropriate standard for a producer when making a recommendation?

Section 6(A)(2)(a) would require agents to act with reasonable diligence, care, and skill (and perhaps prudence, depending upon the working group's determination on that issue). While no specific alternative has been presented and it is unclear exactly how the proposed standard might be crafted, we see no compelling reason to restructure the existing provision in this manner and share the perspectives expressed by others in the industry.

Question 3 – When considering this requirement (Section 6(G)(2)) for a producer, is it appropriate to allow both oral and/or written descriptions?

IIABA and NAHU believe the flexibility provided by the provision found in the current draft is appropriate and warranted, and requiring the disclosure to be provided in writing or in both forms would be unnecessarily prescriptive and an example of regulatory overkill. Consumers will certainly have the opportunity to inquire about the recommendation in any way they deem beneficial or helpful, and other provisions in the draft would still require the producer to memorialize and retain the grounds of the recommendation in writing.

Conclusion

On behalf of our respective organizations and insurance producers across the country, we sincerely thank you for the opportunity to submit these comments. We are happy to assist your further consideration of these issues in any way you deem appropriate. Please contact us at any time if you have any questions or if we can assist you in any manner.

Very truly yours,

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