AMERICANS FOR ASSET PROTECTION

Advocacy in Action. Prosperity for All.

Submitted electronically to jmatthews@naic.org

NAIC A Committee and Working Group Members
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Dear A Committee and Working Group Members,

Thank you for the opportunity to comment on the proposed draft to the Suitability in Annuity Transactions Model Regulation. Americans for Asset Protection (AAP) respectfully submits these comments to register our serious concerns regarding the direction of this draft proposal and its negative impact on the businesses and individuals who serve consumers.

AAP's purpose is to provide consumers asset protection using annuities, life, and long-term care products through experienced and trained insurance professionals. AAP is not an industry trade association or membership organization. AAP offers educational and training services to insurance professionals and is an advocate for good products, good agents and good regulation. We serve over 2,000 independent agents who sell insured asset protection products.

Independent insurance agents help consumers manage risk and insure their property from loss. In order to ensure prosperity, consumers purchase both investment and insurance products. In order to ***preserve*** prosperity, consumers purchase annuities, life insurance and long-term care products. Investments and insurance products serve unique and different purposes. The agents and advisors who sell them require distinct and understandable duties and obligations that recognize these differences.

In other words, consumers buy insurance to preserve and protect their assets and consumers invest in securities primarily to grow their assets - with the knowledge that investing in securities subjects them to the volatility of the stock market and to loss of principal and earnings.

Inherent in the investment process is an ongoing role for the investment advisor with continuous duties and obligations to the client. These duties include determining the investment strategy, selecting the investments to be used, and managing/maintaining investment performance.

Alternatively, the duty of the insurance agent is to determine the insurance needs of the consumer and when/if an annuity may be the solution to address those needs. There is no ongoing role or duty for the insurance agent to select investments or manage the performance of the annuity. While the insurance agent will assist in service matters related to the annuity, the management of the annuity's performance and contractual obligations is the responsibility of the insurer. The draft proposal incorrectly assigns a standard that is germane to the process of managing a client's investments and not to the process of ***insuring and protecting*** a client's assets.

Because the draft proposal and its requirements of fiduciary duties obfuscates the unique distinctions between the role and practices of the investment advisor and the role and practices of the insurance agent, it will cause extreme confusion relative to the roles of insurance agents versus investment professionals. It may also serve to cloud enforcement actions by regulators resulting in considerable harm to consumers who need and seek insurance advice and insurance products.

We and many others have commented previously, the suitability regulation has established itself as a clear and robust standard that helps protect consumers. Even regulators with whom we've met have explicitly praised the efficacy of the 2010 Suitability Model. It has proven itself as a strong regulation that has meaningful and significant liability for non-compliance assigned to insurers and agents. Furthermore, we have reported data produced by the NAIC that shows no indication that the system is fatally flawed or deficient. Finally, in our various visits with regulators and at the NAIC meetings, we have heard only one-off, anecdotal problems with annuity sales with no empirical studies or data to support the premise that fixed annuity consumers need a whole-scale overhaul of the existing and effective regulatory model.

We believe consumers will be better served and more protected with a complete understanding of the differences between investments and insurance as well as the differing roles, duties, and obligations of the professional making the recommendation. We respectfully suggest the Committee consider an alternative proposal that provides the consumer with the information needed to understand these differences.

In adherence to our mission and our position on this proposal, AAP fully supports the FACC Campaign's proposal for better, more detailed disclosure accompanied by a Consumer Relationship Summary that specifically identifies the insurance agents' obligations, duties, and compensation practices to the consumer as well as their duties and obligations to their appointed insurer(s).

We urge the Committee to consider creating a new charge to a Working Group dedicated to pursuing this alternative. In doing so, the NAIC will be demonstrating its leadership in harmonizing investment advisor regulation with regulation that is best-suited and appropriate to consumers seeking fixed annuities. We are available and ready to help members of the Committee and the Suitability Working Group in any way you may find useful. Please feel free to contact me at the contact information provided above.

Respectfully submitted,

Kim O'Brien
Chief Advocate and CEO
Americans for Asset Protection

ANNUITY DISCLOSURE MODEL REGULATION

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Section 1. Purpose

The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts and producers who recommend annuity contracts in order to protect consumers and foster consumer education. ~~The~~With regard to annuity contracts, the regulation specifies the minimum information which must be disclosed, the method for disclosing it, and the use and content of illustrations, if used, in connection with the sale of annuity contracts. With regard to producers, the regulation provides for standardized disclosure of information about the relationship of the producer to the consumer, the form and amount of compensation received by the producer for sale of the annuity, and exposure of any material conflicts of interest that could affect recommendations made by the producer. The goal of this regulation is to ensure that annuity purchasers ~~of annuity contracts~~ understand certain basic features of annuity contracts~~.~~ and are aware of the role and compensation paid to the producers who recommend annuity contracts. Through fuller disclosure and other requirements, consumers will be in a better position to select the annuity that meets their needs and objectives and assess the quality of any recommendation made by a producer.

Section 2. Authority

This regulation is issued based upon the authority granted the commissioner under Section [cite any enabling legislation and state law corresponding to Section 4 of the NAIC Unfair Trade Practices Act].

Section 3. Applicability and Scope

This regulation applies to all group and individual annuity contracts and certificates except:

A. Immediate and deferred annuities that contain no non-guaranteed elements;

B. (1) Annuities used to fund:

(a) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

(b) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,

(c) A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(2) Notwithstanding Paragraph (1), the regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

C. Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

D. (1) Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, provided that compliance with Section 5 shall be required after January 1, 2014, unless, or until such time as, the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.

(2) Notwithstanding Subsection D(1), the delivery of the Buyer's Guide is required in sales of variable annuities, and when appropriate, in sales of other registered products.

Drafting Note: The requirement to provide a Buyer's Guide would not be appropriate for contingent deferred annuities unless, or until such time as, the NAIC adopts a Buyer's Guide that specifically addresses contingent deferred annuities.

(3) Nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this regulation or to require additional disclosure.

E. Structured settlement annuities;

F. [Charitable gift annuities; and]

G. [Funding agreements].

Drafting Note: States that regulate charitable gift annuities should exempt them from the requirements of this regulation. States that recognize or regulate funding agreements as annuities should exempt them from the requirements of this regulation.

Section 4. Definitions

For the purposes of this regulation:

A. "Buyer's Guide" means the National Association of Insurance Commissioner's approved Annuity Buyer's Guide.

B. ["Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes, but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.]

C. "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

D. "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

E. ["Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.]

F. "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity."

G. “Guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed or have determinable elements at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

H. “Illustration” means a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.

I. “Market Value Adjustment” or “MVA” feature is a positive or negative adjustment that may be applied to the account value and/or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company’s current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

J. “Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that 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.

K. “Registered product” means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

Drafting Note: Registered products include, but are not limited to, contingent deferred annuities.

L. “Structured settlement annuity” means a “qualified funding asset” as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

Section 5. Standards for the Disclosure Document and Buyer’s Guide

A. (1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection B and the Buyer’s Guide, if any.

(2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer’s Guide no later than five (5) business days after the completed application is received by the insurer.

(a) With respect to an application received as a result of a direct solicitation through the mail:

(i) Providing a Buyer’s Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer’s Guide be provided no later than five (5) business days after receipt of the application.

(ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(b) With respect to an application received via the Internet:

(i) Taking reasonable steps to make the Buyer’s Guide available for viewing and printing on the insurer’s website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business day of receipt of the application.

(ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

(d) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.

B. At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;

(2) The insurer's legal name, physical address, website address and telephone number;

(3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:

(a) The guaranteed and non-guaranteed elements of the contract, and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spread, and an explanation of how they operate;

(b) An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(c) Periodic income options both on a guaranteed and non-guaranteed basis;

(d) Any value reductions caused by withdrawals from or surrender of the contract;

(e) How values in the contract can be accessed;

(f) The death benefit, if available and how it will be calculated;

(g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(h) Impact of any rider, including, but not limited to, a guaranteed living benefit or long-term care rider;

(4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(5) Information about the current guaranteed rate or indexed crediting rate formula, if applicable, for new contracts that contains a clear notice that the rate is subject to change.

C. Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

Section 6. Standards for Annuity Illustrations

A. An insurer or producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this section and:

(1) Clearly labeled as an illustration;

(2) Includes a statement referring consumers to the disclosure document and Buyer's Guide provided to them at time of purchase for additional information about their annuity; and

(3) Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of illustrations.

B. An illustration furnished an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

C. The illustration shall not be provided unless accompanied by the disclosure document referenced in Section 5.

D. When using an illustration, the illustration shall not:

(1) Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(2) State or imply that the payment or amount of non-guaranteed elements is guaranteed; or

(3) Be incomplete.

E. Costs and fees of any type shall be individually noted and explained.

F. An illustration shall conform to the following requirements:

(1) The illustration shall be labeled with the date on which it was prepared;

(2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");

(3) The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;

(4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the contract is assumed to have been in force;

(5) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;

(6) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;

(7) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;

(8) The non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;

(9) In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent ten (10) calendar years; one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the “low scenario”); one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth (the “high scenario”). The following requirements apply:

(a) The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;

(b) If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least ten (10) calendar years, the allocation to such indexed account(s) shall be assumed to be zero;

(c) If any index utilized in determination of an account value has been in existence for at least ten (10) calendar years but less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;

(d) The non-guaranteed element(s), such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element(s);

(e) If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:

(i) The allocation used in the illustration shall be the same for all three scenarios; and

(ii) The ten (10) calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option.

(f) The geometric mean annual effective rate of the account value growth over the ten (10) calendar year period shall be shown for each scenario;

(g) If the most recent ten (10) calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection H, the most recent ten (10) calendar year historical period experience of the index shall be used for each subsequent ten (10) calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;

(h) The low and high scenarios: (i) need not show surrender values (if different than account values); (ii) shall not extend beyond ten (10) calendar years (and therefore are not subject to the requirements of subsection H beyond subsection H(1)(a)); and (iii) may be shown on a separate page. A graphical presentation shall also be included comparing the movement of the account value over the ten (10) calendar year period for the low scenario, the high scenario and the most recent ten (10) calendar year scenario; and

(i) The low and high scenarios should reflect the irregular nature of the index performance and should trigger every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state;

(10) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page 1 for guaranteed elements");

(11) The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;

(12) The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;

(13) Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;

(14) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

(a) The benefits and values are not guaranteed;

(b) The assumptions on which they are based are subject to change by the insurer; and

(c) Actual results may be higher or lower;

(15) Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps or spreads for fixed indexed annuities;

(16) The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;

(17) Illustrations shall be concise and easy to read;

(18) Key terms shall be defined and then used consistently throughout the illustration;

(19) Illustrations shall not depict values beyond the maximum annuitization age or date;

(20) Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and

(21) Illustrations shall show both annuity income rates per $1000.00 and the dollar amounts of the periodic income payable.

G. An annuity illustration shall include a narrative summary that includes the following unless provided at the same time in a disclosure document:

(1) A brief description of any contract features, riders or options, guaranteed and/or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;

(2) A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;

(3) Identification and a brief definition of column headings and key terms used in the illustration;

(4) A statement containing in substance the following:

(a) For other than fixed indexed annuities:

This illustration assumes the annuity's current nonguaranteed elements will not change. It is likely that they will change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;

(b) For fixed indexed annuities:

This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index will not repeat historical performance, the non-guaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information; and

(5) Additional explanations as follows:

(a) Minimum guarantees shall be clearly explained;

(b) The effect on contract values of contract surrender prior to maturity shall be explained;

(c) Any conditions on the payment of bonuses shall be explained;

(d) For annuities sold as an IRA, qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained;

(e) For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur; and

(f) A brief description of the types of annuity income options available shall be explained, including:

(i) The earliest or only maturity date for annuitization (as the term is defined in the contract);

(ii) For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age seventy (70) or ten (10) years after issue, but in no case later than the maximum annuitization age or date in the contract;

(iii) For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and

(iv) The periodic income amount based on the currently available periodic income rates for the annuity income option in item (ii) or item (iii), if desired.

H. Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

(1) (a) First ten (10) contract years; or

(b) Surrender charge period if longer than ten (10) years, including any renewal surrender charge period(s);

(2) Every tenth contract year up to the later of thirty (30) years or age seventy (70); and

(3) (a) Required annuitization age; or

(b) Required annuitization date.

I. If the annuity contains a market value adjustment, hereafter MVA, the following provisions apply to the illustration:

(1) The MVA shall be referred to as such throughout the illustration;

(2) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;

(3) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;

(4) A statement, containing in substance the following, shall be included:

When you make a withdrawal the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.

(5) Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment;

(6) The illustrative effect of the MVA shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a MVA;

(7) Actual MVA floors and ceilings as listed in the contract shall be illustrated; and

(8) If the MVA has significant characteristics not addressed by Paragraphs (1) – (6), the effect of such characteristics shall be shown in the illustration.

Drafting Note: Appendix A provides an example of an illustration of an annuity containing an MVA that addresses Paragraphs (1) – (6) above.

J. A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:

(1) An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:

(a) The Index(es) which will be used to determine the index-based interest;

(b) The Indexing Method – such as point-to-point, daily averaging, monthly averaging;

(c) The Index Term – the period over which indexed-based interest is calculated;

(d) The Participation Rate, if applicable;

(e) The Cap, if applicable; and

(f) The Spread, if applicable;

(2) The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;

(3) The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and

(4) If the product allows the contract holder to make allocations to declared-rate segment, then the narrative shall include a brief description of:

(a) Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and

(b) Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.

K. A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:

(1) The assumed growth rate of the index in accordance with Subsection F(9);

(2) The assumed values for the participation rate, cap and spread, if applicable; and

(3) The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with Subsection F(9).

L. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including, but not limited to changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue Code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for will not require a revised illustration unless requested by the applicant.

Section 7. Client Relationship Summary

A. A producer who offers annuities must prepare a client relationship summary document (CRS) that is delivered to each prospective client at time of initial engagement prior to taking any annuity application.

(1) Only one CRS is required during the course of the relationship with the client.

(2) If the producer has a website, a copy of the CRS shall be posted on the website.

(3) The CRS shall be short as practicable and written in plain English.

(4) The CRS must be updated if there is any material change in the information contained on the CRS. A copy of the updated CRS shall be provided to existing clients on the earlier of (a) the next meeting between the producer and client or (b) the date of the next sale of an annuity to the client. The updated CRS shall be posted to the producer website, if applicable, within 30 days.

(5) The CRS shall contain the information set forth in subsection B and presented in the order described there.

(6) A standardized CRS set forth in the appendix of this regulation may be used by the producer to meet these requirements provided it is adapted as necessary to ensure all information is accurate.

(7) A producer is exempt from this section if the producer provides a comparable client relationship summary to the client in accordance with requirements of the Securities and Exchange Commission.

(8) A producer may rely on information provided by an insurer if the insurer is the source of relevant information for any part of the CRS. Insurers are required to provide reasonable assistance to producers in assembling necessary information for the CRS.

B. The CRS shall contain the following information:

(1) Title.

(a) The CRS shall be titled "Client Relationship Summary".

(b) The title or preamble shall include the name of the producer and provide the date the CRS was prepared.

(2) Introduction.

(a) The introduction shall indicate the producer is a licensed insurance agent or agency.

(b) It shall state what types of products and services are offered by the producer.

(c) It shall state, if applicable, that the producer is not a securities broker or investment adviser and that the prospective client may wish to consider the advantages and disadvantages of working with other kinds of financial services professionals.

(3) Relationships and Services.

(a) This section shall describe in further detail what products and services are provided by the producer and the nature of the relationship with the client.

(b) To the extent applicable, it shall state the producer will be paid commission by the insurance company for each product purchased by the client.

(c) It shall state that the producer only provides advice that is incidental to the purchase of insurance and the producer is not a disinterested adviser.

(d) It shall make clear that the producer may recommend products for purchase but the ultimate decision is made by the client.

(e) To the extent applicable, it shall make clear that the producer is an agent for the insurer and not the client and the producer does not have a continuing obligation to the client after the sale of an annuity.

(f) It shall explain the producer is only appointed to represent certain insurance companies and the range of products offered by the producer are limited.

(4) Obligations to the Client.

(a) This section shall explain the producer abides by certain laws and regulations in interactions with the client.

(b) It shall explain the producer's obligation to treat the client fairly and provide full and accurate information about any product recommended by the producer.

(c) It shall explain that the producer will only recommend an annuity that is suitable in meeting the needs and objectives of the client based on disclosed information.

(d) It shall disclose that interests of the producer may conflict with interests of the consumer because the agent is compensated for each sale and compensation may vary by product and insurer.

(e) To the extent applicable, it shall explain the producer is not a fiduciary and not obligated to act in the best interests of the client as defined by law. It shall indicate that the client is free to seek services of a fiduciary or financial services professional who may be subject to higher standards of care under the law.

(5) Summary of Fees and Costs

(a) This section shall explain the agent is paid commission by the insurer and that the client does not directly pay compensation to the producer for sale of an annuity.

(b) It shall explain that some annuities contain fees for certain features often offered as a rider and any such fees are disclosed during the sales process.

(c) It shall explain that under law the producer cannot rebate commissions to ensure all clients who are similarly situated pay the same costs and receive the same benefits under an annuity product.

(d) It shall disclose there are other kinds of payment arrangements used by other financial professionals which may be based on assets under management or other factors not tied to product sales.

(e) It shall indicate that additional information about compensation will be provided in a notice of producer compensation at time of sale of each annuity.

(6) Comparisons

(a) This section shall advise the client to consider shopping and comparing products and services offered by the producer with products and services offered by other insurance producers and other types of financial professionals.

(b) It shall explain annuities have unique features that may be of interest to the prospective client but in the alternative there are other options including securities and banking products that may be of interest to the client.

(7) Conflicts of Interest

(a) This section shall disclose any material conflicts of interest (other than receipt of commissions) that the producer may have relative to interests of the client.

(b) It shall explain that material conflicts of interest, if any, may affect the producer's judgement in recommending annuity products.

(c) Material conflicts of interest include but are not limited to an ownership interest in any insurer, profit-sharing connected to certain products, participation in long term incentive programs connected to certain insurers or products, or remuneration in the form of non-cash compensation that may be based on volume of sales production including prizes, entertainment, travel expenses, meals, or other items of value.

(d) It shall provide a description of any material conflicts of interest to prospective clients in sufficient detail so prospective clients can assess the extent to which material conflicts of interest may affect recommendations made by the producer. However, the producer is not required to disclose specific dollar amounts.

(e) In the alternative, the producer may satisfy this obligation concerning disclosure of material conflicts of interest by providing such information as part of and in accordance with the Notice of Producer Compensation described in Section 8 below.

(8) Additional Information

(a) This section shall indicate additional information is available upon request.

(b) It shall indicate how the prospective client may obtain further information about the producer and topics covered by the CRS (for example, by reference to a website of the producer or an affiliated agency or insurer).

(c) It shall also provide information about how to look up the producer's license and appointments if such information is available on-line or otherwise from the state insurance department.

(d) It shall also indicate the prospective client may contact the state insurance department if there are any concerns or questions about the producer, annuity products offered by the producer, applicable laws or regulations, or any disclosures in the CRS.

Section 8. Notice of Producer Compensation

A. A producer shall disclose the following information to an applicant orally or in writing at or prior to the time of application for an annuity:

(1) A description of the role of the producer in the sale of the annuity including the fact that the producer is a licensed insurance agent;

(2) That the producer will receive compensation from the selling insurer or other third party for sale of the annuity contract if applicable;

(3) That the producer will be paid compensation in the form of commission if applicable;

(4) That compensation paid to the producer may vary depending on certain factors including, to the extent applicable, the annuity contract selected by the applicant, the insurer selected by the applicant, and the amount of premium paid by the applicant;

(5) If not already disclosed in a CRS provided to the applicant, that the producer has certain material conflicts of interest including, to the extent applicable, ownership interest in certain insurers, profit-sharing connected to certain products, participation in long term incentive programs connected to certain insurers or products, remuneration through non-cash compensation that may be based on volume of sales production including prizes, entertainment, travel expenses, meals, or other items of value;

(6) That the applicant may obtain more information about the compensation that the producer will be paid for sale of the annuity (and, if applicable, any material conflicts of interest) upon request;

(7) That upon specific request the applicant may obtain information about compensation that would be paid to the producer for alternative annuity products that are quoted or presented by the producer.

B. If the applicant requests more information about the producer's compensation for sale of the annuity prior to issuance of the annuity, the producer shall disclose the following information to the purchaser in writing at or prior to issuance of the annuity:

(1) A description of the nature, amount, and source of any compensation to be received by the producer as a result of the sale of the annuity (or a reasonable estimate thereof);

(2) A description of the nature, amount, and source of any compensation to be received by any other producer including any agency as a result of the sale of the annuity (or a reasonable estimate thereof), or in the alternative an indication that such information may be obtained from the applicable insurer;

(3) A description of the nature and extent of any material conflicts of interest relating directly or indirectly to the sale of the annuity (if not otherwise disclosed in a CRS provided to the applicant);

(4) A description of the nature, extent, and source of any non-cash compensation received in the prior twelve months or reasonably expected to be received in the ensuing twelve months from any single source associated with the annuity sale (e.g., insurer, agency) if the value of the non-cash compensation exceeds or is expected to exceed $500 during the period;

(5) If specifically requested, a description of the nature, amount, and source of any compensation that would be expected to be received by the producer for sale of any alternative annuity product quoted or presented by the producer along with corresponding information material conflicts of interest and non-cash compensation that would apply in connection to sale of the alternative annuity products.

C. If the applicant requests more information about the producer's compensation within 30 days after issuance of the annuity, then the producer shall disclose the information required by Section 7.B. within the following ten business days.

D. If the exact nature, scope, or amount of compensation to be disclosed by the producer, or any part thereof, is not known at the time of disclosure required hereunder, then the producer shall include in the disclosure as to that part of the compensation which is unknown:

(1) A description of the circumstances that may determine the receipt and amount or value of such compensation; and

(2) A reasonable estimate of the amount or value, which may be stated as a range of amounts or values.

E. An insurance producer shall not make statements to an applicant that contradict the disclosures required by this Section 7 nor make any other misleading or knowingly inaccurate statements about the role of the insurance producer in the sale or compensation to be received by or paid to the producer or any other party as a result of the sale of the annuity.

F. Insurers are required to provide reasonable assistance to producers in assembling necessary information for the notice of consumer compensation which shall include the following:

(1) Providing timely and accurate information on compensation paid by the insurer for any of its products as needed by the producer to prepare the notice required by Section 7.A.

(2) Providing timely and accurate information on material conflicts of interest and non-cash compensation pertaining to the insurer or its products as needed by the producer to prepare the notice required by Section 7.A.

(3) Providing timely and accurate information on compensation paid to any other agents or agencies in connection with an annuity sale, if requested by the applicant, as required under Section 7.B.(2).

(4) Providing to the producer timely and accurate information on compensation, non-cash compensation, and material conflicts of interest to the extent such information is requested by the applicant and is not otherwise available to the producer to satisfy the requirements of Section 7.B.

G. Non-cash compensation means any form of compensation received by the producer from an insurer or intermediary that is not cash compensation but is variable or dependent on the volume of annuity sales production, including but not limited to, entertainment, merchandise, gifts and prizes, travel expenses or meals and lodging, and reimbursement for marketing or advertising expenses. Insurers may only offer non-cash compensation to producers that is variable or dependent based on total volume of annuity sales production giving equal weight to all annuity products offered by the insurer. Non-cash compensation, for purposes of Sections 6 and 7, shall not include gifts for infrequent life events such as weddings, birth of a child, or bereavement; occasional meals or tickets for entertainment that may be business related but are not tied to production goals; any expenses in connection with training or education that takes place at the offices of the producer, an intermediary agency, or the insurer's headquarters or other bona fide business location.

<u>Section 9.</u> ~~Section 7.~~ **Report to Contract Owners**

For annuities in the payout period that include non-guaranteed elements, and for deferred annuities in the accumulation period, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

A. The beginning and end date of the current report period;

B. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

D. The amount of outstanding loans, if any, as of the end of the current report period.

<u>Section 10.</u> ~~Section 8.~~ **Penalties**

In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of Section [cite state's unfair trade practices act].

<u>Section 11.</u> ~~Section 9.~~ **Separability**

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

<u>Section 12.</u> ~~Section 10.~~ **[Optional] Recordkeeping**

A. Insurers or insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information provided in the disclosure statement (including illustrations) for [insert number] years after the contract is delivered by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

<u>Section 13.</u> ~~Section 11.~~ **Effective Date**

This regulation shall become effective [insert effective date] and shall apply to contracts sold on or after the effective date.

Client Relationship Summary
For Insurance Licensed Agents

Date: ________________________

INSURANCE AGENT/PRODUCER INFORMATION ("Me", "I", "My")

First Name: ______________________________ Last Name: __________________________

Firm Name: ______________________________ Website: _____________________________

Insurance License #__________________________

CLIENT INFORMATION ("You", "Your")

First Name: ________________________________Last Name: __________________________

INSURANCE AUTHORIZATION

I am licensed and authorized to sell life insurance including annuities in [*State*] in accordance with state laws. I offer the following products:

☐ Fixed Index Annuity ☐ Fixed Rate Annuity ☐ Fixed Life Insurance ☐ Other

RELATIONSHIPS & SERVICES

I am an insurance agent with [*xx*] years of experience advising clients about insurance and annuity products. I strive to provide my clients with suitable annuity products and sound advice in meeting their financial goals. I am required by law to be trained in the benefits, features and fees of any annuity product I recommend, and I satisfy continuing education requirements to maintain my licensure. As an insurance agent, I am appointed with and represent various insurance companies. Those insurance companies do not restrict the insurance products I sell or recommend but the range of products I offer are limited to products available from those insurance companies. Any advice that I provide to you is incidental to the purchase of insurance, and because I am paid commission, I do not act as a disinterested adviser. I may recommend products for purchase but the ultimate decision to purchase or not to purchase is made by you. If you decide to purchase a product from me, you will be issued an annuity contract from the insurance company and I will continue working with you as long as I am agent of record. I am not a securities broker or investment adviser. You may wish to consider the advantages and disadvantages of working with other kinds of financial services professionals.

OTHER SERVICES

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MY OBLIGATIONS TO YOU

I will comply with state insurance laws and regulations in my interactions with you. I am obligated to treat you fairly and provide full and accurate information about any product that I recommend to you. I will only recommend an annuity that is suitable in meeting your needs and objectives based on information you have disclosed to me.

I will disclose any of my interests that may conflict with your interests including, but not limited to, my compensation for each sale. I am not a fiduciary and I am not subject to a best interest standard of care as those terms are defined by law. You are free to seek services of a fiduciary or financial services professional who may be subject to different or higher standards of care.

SUMMARY OF FEES & COSTS

COMPENSATION

The compensation an insurance company pays me when you purchase an annuity is called "commission." This commission covers, in part, my cost of doing business and providing services to you. Typically, the commission amount will vary based on the type of annuity you purchase, the amount of premium you pay for the annuity, and the commission schedule of the insurance company.

You do not pay commission directly and instead all of your premium is applied to the annuity. Commission is one of many costs which the insurance company factors into the pricing of its products which also includes guaranteed and non-guaranteed benefits and other features offered under that annuity.

The insurance company may pay commission to other agents or third parties such as marketing organizations who assist in supporting the relationship between me and the insurance company. These third parties may pay me part of their commission. An insurance company or third party may offer additional incentives (called non-cash compensation) to me that are not based on the sale of an individual product, but rather based on my overall sales with the insurance company or third party. These may include, but are not limited to, entertainment, merchandise, gifts and prizes, travel expenses or meals and lodging, and reimbursement for marketing or advertising expenses.

Additional information about my compensation will be provided to you in a Notice of Producer Compensation at time of sale of each annuity.

OTHER FEE & COST INFORMATION

Some annuities contain fees for certain features often offered as a rider and any such fees are disclosed during the sales process. Under law I cannot rebate commissions to ensure all clients who are similarly situated pay the same costs and receive the same benefits under an annuity product. There are other kinds of payment arrangements used by other financial professionals which may be based on assets under management or other factors not tied to product sales.

COMPARISON TO OTHER PROVIDERS

You may want to consider shopping and comparing products and services offered by me with products and services offered by other insurance producers and other types of financial professionals. Annuities have unique features that may be of interest to you but there are other options including securities and banking products that may be of interest to you. I will only recommend an annuity to you if I believe it meets your financial needs and goals.

MATERIAL CONFLICTS OF INTEREST

Below I have identified any material conflicts of interest that could affect my recommendations. If there are no material conflicts of interest, other than my compensation as described above, it says "none." I want you to be aware of any material conflict of interest so you can evaluate the quality of my recommendation. Material conflicts of interest include such things as ownership interest in an insurer, receiving profits for certain products, participation in long term incentive programs offered by insurers, or payment in the form of non-cash compensation based on volume of sales production including prizes, entertainment, travel expenses, meals, or other items of value. My material conflicts of interest, if any, are listed below:

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ADDITIONAL INFORMATION

You may obtain further information about me and the topics covered here at [*website of producer or affiliated agency or insurer*].

You may verify my licensing authorization and my insurance company appointments and research any other concerns or questions you may have about me or applicable laws or regulations at [*state insurance department website and phone number*].

Upon application for purchase of an annuity from me, you will be given a Notice of Producer Compensation which will provide further details on my compensation and other relevant information about my practices.

CERTIFICATION & ACKNOWLEDGEMENT

I certify and acknowledge that I have and read and understand this Client Relationship Summary. I understand that I may seek products and services from other financial professionals at my discretion and am under no obligation to purchase an annuity or other insurance product from the agent named above. I understand that this document is not a contract and creates no contractual obligation between you and me or any other third party.

___________________________________	___________________________________
Signed	Date