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Submitted electronically to jmatthews@naic.org

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**RE: *November 2018 Exposure Draft
Proposed Amendments to Suitability in Annuity Transactions Model Regulation***

Dear A Committee and Working Group Members:

Thank you for the opportunity to comment on your November 2018 exposure draft amendments to the Suitability in Annuity Transactions Model Regulation.

The Fixed Annuity Consumer Choice (FACC) Campaign has previously expressed its deep concerns about the current direction of the NAIC on this issue and remains profoundly worried that the Working Group approach is flawed and should be revisited. We believe the NAIC is headed down the wrong path which, even if motivated by good intentions, will harm fixed products, the agents and agencies who sell them, and consumers who have benefited for decades from their guaranteed features and other valuable attributes designed specifically for aging consumers seeking financial security and peace of mind.

We believe adoption of the draft proposal in its present form would have long term consequences harmful to consumers by establishing unrealistic standards for insurance agents, causing disruption in the marketplace, reducing consumer choice, and inviting unnecessary litigation. This is not exaggeration. We believe these are real marketplace concerns that have not received sufficient attention by the NAIC as it determines the proper course forward in addressing the role of insurance regulation in the larger financial services industry context. We do not agree with the premise that somehow insurance regulation must be harmonized or parallel to securities regulation when there are real differences with respect to the underlying value proposition offered by fixed products and their method of distribution.



In this letter we wish to divide our commentary into three parts. First, we wish to further explain our philosophical opposition to the NAIC best interest proposal. Second, we wish to address specific areas of concern about the proposed regulation which we believe at a minimum should be fixed. Third, we wish to describe our own proposal for improving regulation of the annuity marketplace in ways that we think will truly benefit consumers. We are hopeful dividing our comments in this manner will facilitate your review and ensure all three parts of our message – the inherent flaws of this rule, the need for essential fixes, and introduction of our own alternative approach - will each receive due consideration.

FACC Perspective on the NAIC Best Interest Proposal

FACC has already commented extensively in prior submissions on our view that the NAIC is trying to fix what is not broken. We cannot agree the model suitability regulation should be modified when all evidence indicates it is working as an effective standard and compliance system for the insurance marketplace – indeed every commissioner that we have spoken with has agreed the model suitability regulation works.

It is our view the rule proposal – establishing some nebulous best interest standard – only serves to perpetuate concepts arising out of the now discredited Department of Labor fiduciary rule that sought to impose ill-fitting fiduciary and investment adviser standards upon insurance agents and fixed life and annuity products. While we recognize an aura of inevitability may be building around this rule proposal, which we believe is largely driven by outside pressure rooted in the “need to do something”, we still wish to explain our fundamental opposition to the approach taken by this proposal.

We maintain these concerns have not received adequate attention and will continue our effort to elevate these concerns for consideration whether by the Working Group, A Committee, or full membership of the NAIC.

- While perhaps well intentioned, the NAIC proposal plays into and perpetuates a false narrative that today’s fixed annuity sales practices are unsound and consumers are being abused when there is no evidence of that and in fact the overwhelming evidence says suitability works and consumers are satisfied. In truth the marketplace today is strong and these proposals will harm fixed annuities, independent agents, and consumers. Insurance regulators have acknowledged the current suitability model is effective and we believe regulators have the tools necessary to protect consumers in relatively rare instances where a sale was inconsistent with the best interests of the consumer.
- The NAIC proposal – whether it uses the words “best interest” or not – seeks to create a new standard for agents that is vague and uncertain. This new standard will undoubtedly become grist for second guessing regulation and treasure hunting litigation. The rule as presently written requires that agents put client interests ahead of their own interests



without explanation of what that means. We believe it is a fiduciary duty and will be construed as such by regulators and courts. It crosses an important line by going beyond the proper standard in a free and competitive marketplace which is full disclosure and suitability. Comparison of agent and consumer interests in a sales transaction – where the agent does not manage or oversee client assets or otherwise serve as a fiduciary – is inherently ambiguous and an open invitation to second guessing and litigation.

- The NAIC proposal will potentially force agents to become investment advisors. The requirement that agents must act with “reasonable diligence, care, skill, and prudence” invites interpretation that agents must act in the same manner as securities agents and investment advisers. But insurance agents play a different role compared to securities professionals who take on responsibility for client accounts and investment performance and in many cases act as true fiduciaries with paternal responsibility for client portfolios. By contrast, insurance agents sell fixed products managed and guaranteed by insurance companies and as such have no authority or influence on the performance of the annuity nor control of client assets. Insurance-only agents provide limited advice to clients about the advantages and disadvantages of guaranteed products which does not make the advice any less valuable or necessary but should not require insurance-only agents be compared to investment advisers who purport to advise across a client’s full portfolio. In short, these are two entirely different businesses and standards of conduct should reflect the differences rather than regulate them in the same manner. Best interest standards that apply to securities brokers and advisers apply for a reason and are not applicable and do not translate to insurance agents that only sell fixed annuities and other guaranteed products.
- The NAIC proposal fails to recognize the unique structure of independent distribution which consists of agents and marketing organizations working for multiple carriers. As with the DOL rule, the supervision requirements of the NAIC proposal are built on the broker dealer model which presupposes a single broker dealer overseeing an agent’s book of business across all products and services. However, independent insurance agents are not controlled by any single insurance company and are not subject to the kind of oversight that is contemplated by the NAIC rule. To comply with this new rule, as written, insurance companies would have to restructure their independent distribution channel which could very well mean dismantling independent distribution and causing considerable disruption in the marketplace and reduction in competition and product offerings.

Many of these concerns were articulated in our prior submissions to the Working Group over the course of its proceedings. We are attaching copies of those submissions which we ask be reviewed and considered by the A Committee.

FACC Urges Certain Minimum Fixes

While FACC is steadfast in its belief the current NAIC proposal is misguided and should not be adopted, we urge the A Committee (or Working Group as applicable) to consider certain partial



fixes that would help ameliorate but not eliminate the proposal's harmful effects on the marketplace. This is not intended as an exhaustive commentary on the provisions of the rule but does highlight some of the more prominent trouble spots with the rule and how they might be addressed to alleviate harmful effects on the marketplace.

1. Requiring that agents act "in the interests of the consumer" and not place their own financial interests "ahead of the consumer's interests" is ambiguous and easily interpreted as a fiduciary duty. The rule proposal should state explicitly that nothing in the rule is intended to be construed as making insurance agents into fiduciaries. The proposal should further clarify that the agent is not required to act in the *exclusive* interest of the client which could be easily inferred by the absence of any qualifier to the contrary. Beyond that, the rule should make clear an agent does not violate this nebulous duty by attempting to sell products within the agent's portfolio when there are less costly or differently configured products available in the marketplace that are arguably "in the interest of the client" but not offered by the agent. Absent such clarifications, the question arises in every case whether this rule demands an agent do what is "best" for the client which can always be construed to mean the agent should have surveyed the entire marketplace and only sold the most economically superior product which of course is subjective and the epitome of second guessing.
2. Requiring that agents act with "reasonable diligence, care, skill, and prudence" invites direct comparison to standards that apply to investment advisers and other agents and fiduciaries involved in delivery of financial services. This is unfair to insurance-only agents. The rule proposal should be clarified by stating that insurance-only agents carrying out their responsibilities under this regulation will be compared only to other insurance-only agents in determining whether they have satisfied these duties of diligence, care, skill, and prudence. Failing to provide such clarification will likely mean that every insurance agent must become an investment adviser in order to demonstrate the proper care was exercised in the course of selling any fixed product even though the agent only sells insurance products and the agent does not seek to give advice concerning the client's entire investment portfolio.
3. Requiring that an insurer "establish a system of supervision that is reasonably designed to achieve . . . its producers' compliance" with the newly expanded regulation is impossible for insurers that oversee independent agents and marketing organizations. That independent distribution channel accounts for the vast majority of fixed indexed product sales today and will be put in jeopardy by this proposal. Clarification should be added that insurance companies are not required to supervise anything other than their own products and their own compensation paid to independent agents. Absent such clarification, insurance companies are put in the position where they must ensure agents have satisfied their obligations under the rule with respect to all products sold and compensation received by the agent from all insurers represented by that agent. That defies the current structure of independent distribution – i.e., insurers do not monitor how agents sell competitor products or what compensation agents receive from competitor insurers - and seemingly could only do so through violation of antitrust



laws whereby insurers would coordinate to regulate independent agents. We submit this must be fixed or independent distribution could be lost.

4. Providing an exemption for “sales made in compliance with FINRA rules pertaining to suitability and supervision of annuity transactions” is wholly unnecessary and constitutes an unfair loophole. It is ironic – to say the least – that the stated purpose of this rule is to create harmonization across the securities and insurance industries (at the urging of the securities industry) but those who operate in compliance with FINRA (i.e., the securities industry) are excused wholesale from these rules. There is no justification for such an exemption and it should be removed. The NAIC deference to FINRA under the old suitability rule was justifiable to the extent securities suitability at one time was considered more advanced but those days are long gone. The fact is there are many overlapping laws that apply to both securities and insurance, and where applicable, insurers and agents must comply with both regimes. It is also a fact that today it is unknown what rules might be adopted by FINRA with respect to “best interest” and thus any carte blanche exemption is unwarranted. The only circumstance which would warrant special treatment for representatives registered with FINRA would be if the NAIC rules and FINRA rules were in actual conflict but that seems unlikely, and even if that were the case, the conflict should be isolated and addressed rather than providing free passes based on FINRA compliance. This rule, if adopted, will fall hard on insurance-only agents and to ensure semblance of a level playing field there should be no special exemptions.

FACC Offers an Alternative Approach

FACC recognizes there is always room for improvement in sales practices and acknowledges the growing desire among regulators to address possible divergence of interests as between consumers and insurance agents. While FACC believes these concerns are overstated and notes the genesis for such concerns emanates from the securities industry, FACC is not a naysayer and we have put forward our own detailed proposal to address these issues.

FACC’s proposal consists of enhancements to the NAIC Annuity Disclosure Model Regulation. Our proposal has three components consisting of a client relationship summary similar to what is being developed by the SEC, a notice of producer compensation similar to what has been adopted in New York, and provisions addressing non-cash compensation. While some are quick to dismiss “more disclosure”, we believe our proposal is much more than that, consisting of a smartly designed disclosure-oriented framework that will bring about alignment of consumer expectations and agent practices.

Instead of tampering with the standard of care, FACC believes the better approach is to provide agents and consumers with the tools and framework to communicate more effectively about compensation and conflicts. We believe our proposal can create what we would call “a more virtuous marketplace” that facilitates flow of information and encourages true alignment of consumer and agent interests. Our proposal is concrete, will provide meaningful value to



consumers, and avoid unnecessary and costly disruption to the marketplace. For regulators, consumers, and industry, this can indeed be a win-win-win.

A copy of our proposal is attached to this submission.

FACC has been urging the NAIC to step back from this process – and reconsider the direction of these efforts – mostly because we believe the emerging proposal suffers from a lack of clear purpose. It remains unclear what problem is being solved. It remains unclear why the existing suitability model has been deemed inadequate. It remains unclear how consumers are *not* being served by existing laws. It remains unclear what the SEC will do and why insurance regulation must be harmonized with securities regulation. While there have been vague suggestions that regulators need more tools, we maintain insurance regulators currently have ample tools at their disposal to take action against any company or agent found to be acting purely out of self-interest in a manner contrary to what is right for the client.

This lack of clear purpose is perhaps a symptom and result of the manner in which this process has been unfolding. The NAIC Procedures for Model Law Development would ordinarily require that any new model law or amendment be reviewed and approved for development first by the NAIC Executive Committee but apparently that has not happened. While there is an exception under those procedures for federally-mandated state laws, there is no federal mandate here, given there has been no action by Congress, the DOL Fiduciary rule was struck down by the courts, and the SEC is pursuing rules only directed at securities professionals. We believe the NAIC would benefit from a more fulsome discussion at Executive Committee or even plenary on threshold questions concerning the need for this type of regulation and what options are possible.

Instead this proposal has traveled on a rather narrow and circuitous path. It was developed primarily at two Working Group meetings where language was proposed and incorporated in a series of straw votes with no formal motion or adoption. The draft was then elevated to A Committee still without any formal motion or vote by the Working Group. This ad hoc process has enabled the proposal to proceed forward without confronting core questions of whether the rule proposal is even needed, whether it has support by NAIC leadership, whether it has broad based support among commissioners, and whether there might be better alternatives.

We point this out – not to be critical or merely raise technical objections - but to underscore the need for wider and deeper review of this proposal. FACC has met individually with many of the Working Group members as well as members of the A Committee and Executive Committee who agree privately that the existing model suitability regulation is working and question whether additional regulation is truly needed. We believe the NAIC needs a more open discussion on these questions because the stakes are high and the impact of this regulation would be far-reaching.



FACC cannot overstate its concern that the adverse effects of this proposal could be significant in the absence of any clear or tangible benefits, forcing structural changes to the fixed annuity industry, turning insurance agents into fiduciaries, subjecting companies and agents to excessive litigation, compelling insurance agents to become investment advisers, upending long standing distribution models that have served the public well, and ultimately hurting consumers by reducing choices in delivery of insurance services and product availability. We hope A Committee will proceed with utmost caution as it considers this regulation and keep an open mind as to how best to address the needs of consumers without causing unnecessary and costly disruption to the annuity industry.

Thank you for the opportunity to be heard.

Respectfully,

A handwritten signature in black ink, appearing to read "Dwight Carter".

Dwight Carter
Chair

Attachments: Proposed Model Annuity Disclosure Regulation
Prior FACC Submissions to the Working Group

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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.
- E. 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.

Section 9. ~~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.

Section 10. ~~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].

Section 11. ~~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.

Section 12. ~~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.

Section 13. ~~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

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:

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

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April 26, 2018

SUBMITTED ELECTRONICALLY: jmatthews@naic.org

NAIC Annuity Suitability (A) Working Group
c/o Jolie H. Matthews, Senior Health and Life Policy Counsel
National Association of Insurance Commissioners
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RE: Proposed Revisions to NAIC Annuity Suitability Regulation

Dear Working Group Members:

The Fixed Annuity Consumer Choice Campaign (FACC Campaign)* was originally organized to address issues impacting fixed annuities in connection with Department Labor (DOL) fiduciary rule. While we were very pleased to see the Fifth Circuit strike down the DOL fiduciary rule, we are deeply concerned that state and federal regulators are now rushing to fill what they may perceive as a vacuum, thereby perpetuating inherent flaws and false justifications of the DOL fiduciary rule that led to its demise. We ask - first and foremost - that the NAIC pause and step back from this rush to regulate based on a now largely debunked notion that the financial services industry is monolithic and somehow a new uniform “best interest” standard is the solution to what remains a largely undefined problem.

In our prior letter to this Working Group on January 22, 2018, we urged this Working Group to rethink its approach to “best interest” and consider leaving the suitability regulation alone, focusing instead on better disclosure and clearer rules around compensation and conflicts of interest. We believe - more than ever - this is what the NAIC should do in order to focus on real

* The FACC Campaign is an unincorporated alliance of insurance agents, independent marketing organizations, insurers, and industry advocates seeking to protect the availability of fixed annuities by ensuring any standard of conduct regulations adopted by applicable regulators recognize and appropriately align with fixed annuity distribution through independent agents and marketing organizations.



solutions for consumers, rather than expending all its energies on establishing a theoretical “standard of care” that propagates a false sense of security that laws can mandate good behavior and potentially ushers in a regulatory environment hostile to innovation while creating a platform for ruinous litigation. It is particularly regrettable that “suitability”, a relative newcomer to the insurance industry, is suddenly dismissed as inadequate and viewed even with contempt, when in fact all evidence indicates suitability works and the real issues worthy of consideration all boil down to helping consumers better understand the identity of their financial professionals, what services they offer, how they are compensated, and disclosing material conflicts of interest.

Our primary purpose in writing today is to urge this Working Group to proceed cautiously and resist the temptation to charge ahead with a “best interest” rule when there is so much uncertainty surrounding these matters including a newly released SEC rule proposal that is nothing more than that - a proposal. Needless to say, it is impossible for the NAIC to harmonize with the SEC or other regulatory authorities - ostensibly the goal of the Working Group - when securities regulators too are grappling with and exploring optional approaches as evidenced by the SEC’s rule *proposal* which was accompanied by dozens of open ended questions. There is no telling where the SEC rule proposal will ultimately land especially since several SEC Commissioners vocalized deep reservations about what they essentially characterized as staff’s proposal, making clear the Commissioners are interested in public and industry feedback and reserving judgment on the shape and content of any final rule. Given this situation, while we appreciate the NAIC wishes to be proactive and provide leadership, the circumstances call for patience and the NAIC should take the necessary time to fully assess and analyze the SEC proposal, both its content and its uncertain path forward, while at the same time considering the full breadth of alternatives for improving insurance regulation without being constrained by largely political considerations that have propelled the concept of “best interest” as some kind of ideal preordained outcome.

We have only begun to analyze the SEC rule, but our initial impressions are not favorable. We suspect others will share similar concerns as the rule receives more scrutiny in the weeks and months ahead. Based on our initial review, the rule is quite complicated with many parts and subparts. The commentary is nearly 1000 pages which illustrates how complex these new rules are contrary to the SEC’s desired goal for simplicity. There is no definition as such of “best interest” though it is evident that best interest is virtually equivalent to fiduciary duty. The supposed safe harbor is not a true safe harbor because all the elements (disclosure obligation, care obligation, conflict of interest obligations) are themselves subjective requirements thus leaving financial professionals at risk of violating the rule’s idealistic ill-defined standards. The SEC indicates it intends not to create private right of action, but it is unclear whether that would hold



true for a rule that redefines consumer expectations. The rule is particularly ill-suited for the fixed annuity industry, suffering many of the same deficiencies as the DOL fiduciary rule, including a reliance on broker-dealers to supervise and mitigate financial incentives given to their exclusively controlled salespersons, which is a construct that simply does not translate to the independent agent system which is the backbone of fixed annuity distribution. If applied as a uniform standard to the fixed annuity industry, it would be particularly imbalanced, given the securities industry is largely protected by an arbitration system that tempers the effects of a high standard like “best interest” whereas the insurance industry faces judges and juries under state law without the inherent safeguards of arbitration under uniform national regulation. We could go on identifying concerns, but the larger point is that the rule is complex, it is not well suited to the insurance industry, it should not be viewed as *fait accompli*, and the NAIC should seize this opportunity to reconsider the effects of any such rule on the insurance industry.

We recognize the Working Group has its own best interest proposal and there is considerable inertia to keep that moving along. We recognize too that some trade groups are supporting best interest as a panacea to market conduct issues even though we think that is wrongheaded and mostly based on self interest in creating a supposed level playing field (which in fact would be un-level and unfair vis-à-vis fixed annuity providers). That said, we remain steadfast in our view that the NAIC should reconsider its approach, using this interlude while the SEC considers its own best interest proposals, to zero in on real issues of disclosure and compensation practices. In other words, we urge the NAIC to “hit the pause button” on best interest, leave the suitability rule intact, turn its attention to more concrete and meaningful regulatory gaps in areas of disclosure and compensation practices, and develop model regulations that will actually help consumers without unnecessarily harming the insurance industry.

We appreciate your consideration of our views. We would like to reserve the right to submit additional comments in the next few weeks as we study the SEC rule more closely, see what is said by other commenters, and get a better sense of the direction of this Working Group.

Sincerely,

Dwight Carter
Chairman, FACC Campaign



January 22, 2018

SUBMITTED ELECTRONICALLY: jmatthew@naic.org

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RE: Proposed "Best Interest" Revisions to NAIC Annuity Suitability Regulation

Dear Working Group Members:

The Fixed Annuity Consumer Choice Campaign (FACC)* was organized to address certain issues impacting fixed annuities in connection with Department Labor (DOL) fiduciary rule. While generally FACC focuses its attention on DOL rule deliberations, we have reviewed the NAIC proposal to incorporate concepts of "best interest" into the NAIC's model suitability regulation, and wish to comment on one particular point that may not otherwise be addressed by trade associations representing the industry.

While we have a number of concerns about the NAIC best interest proposal, this letter is to urge the NAIC to give consideration to its overall approach to the concept of "best interest". Specifically, it is our belief the suitability regulation is working and need not be disturbed to address "best interest" concerns which could be better addressed through a separate regulation.

* The FACC Campaign is an unincorporated alliance of insurance agents, independent marketing organizations, insurers, and industry advocates seeking to protect the availability of fixed annuities by ensuring all fixed annuity products are included in Prohibited Transaction Exemption 84-24 or an equivalent exemption under the DOL fiduciary rule that is compatible with the independent agent distribution system.



Insurance companies and agents have spent years developing appropriate systems and protocols to comply with suitability. We propose the NAIC minimize any changes to the suitability regulation to avoid disruption, confusion, and costly administrative overhauls.

It is widely understood that “best interest” (an outgrowth of fiduciary duty) consists of two components - prudence and loyalty. Suitability largely addresses the prudence component of best interest by requiring that any insurance agent (or company) selling any annuity determine there are reasonable grounds to believe the annuity is appropriate for the consumer based on the consumer’s disclosed insurance needs and financial objectives.

Loyalty is the other component of best interest which is aimed at ensuring an agent’s recommendation of any product is motivated by the consumer’s needs and objectives rather than solely the agent’s own self-interest or pecuniary gain. These loyalty issues are purely a function of the compensation paid to and received by the agent, including both cash and noncash compensation, that might influence the agent’s recommendations or color the agent’s decision-making for a consumer.

We urge the NAIC to consider developing a model regulation to address cash and noncash compensation issues separate and apart from the existing suitability regulation. We believe the suitability regulation should stand on its own and should not be diluted or encumbered with other kinds of requirements (e.g., best interest, conflict of interest, compensation, non-cash compensation). We believe the compensation issues implicated by “best interest” are distinct and better handled through a freestanding regulation that more directly addresses the need for proper disclosure of agent compensation and establishing appropriate standards and protocols addressing any potential conflicts of interest (e.g., non-cash compensation) without upsetting existing suitability regulations.

We submit that compensation related issues are particularly sensitive and deserve careful consideration beyond what is contained in the model proposal. Cash and noncash compensation issues are addressed in detail by FINRA and other regulatory bodies. The time possibly has come for NAIC to do something similar so standards and protocols are established for the life insurance industry. Such a regulation, for example, could address issues of proper disclosure as well as exceptions for certain kinds of noncash compensation such as de minimus gifts, occasional meals



and entertainment that do not influence product recommendations, and covering expenses for *bona fide* training events. Given the complexity and seriousness of these matters, such issues would best be addressed in a separate regulation.

In closing, we appreciate inertia may favor continuing on the track of engrafting “best interest” onto the suitability regulation. However, our impression is that the NAIC deliberations are still in their early phases, and we would urge NAIC to step back and consider carefully whether the preferable approach would be to create a separate regulation addressing compensation issues as described above.

Your consideration of these views is much appreciated. Should you have any questions, please feel free to contact me or my FACC colleague and co-founder, Kim O’Brien, at the numbers or emails indicated above

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight Carter". The signature is fluid and cursive, written over a light blue horizontal line.

Dwight Carter
Chairman, FACC Campaign