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RE: *Annuity Suitability (A) Working Group's proposed revisions to the Suitability in Annuity Transactions Model Regulation (#275)*

Thank you for the opportunity to comment on the Annuity Suitability (A) Working Group's proposed revisions to the Suitability in Annuity Transactions Model Regulation (#275). We appreciate the time and effort put into this proposal and look forward to continued discussions to ensure that consumers are protected and informed as they navigate their insurance savings options.

AAP, Americans for Asset Protection (formerly Americans for Annuity Protection) was founded by industry experts and service providers. AAP's mission is to make certain consumers are supported and protected by a marketplace for that is efficiently and effectively regulated. AAP believes all consumers should have unrestricted and easy access to knowledgeable and trained professionals offering competitive and beneficial asset protection products that help achieve financial independence and security.

The proposed draft dated 11/24/2017 appears to address three separate initiatives for the annuity marketplace:

1. Modify the existing 2010 Suitability in Annuity Transactions Model Regulation (#275);
2. Implant a "best interest" standard of care; and,
3. Attach new and additional disclosure requirements.

Our comments will address these three initiatives and our concerns with the proposal while offering proactive recommendations for continued discussions and efforts.

Modify the Existing 2010 Suitability Model

There can be little doubt that the 2010 Suitability Model has been an unprecedented regulatory success. Based on the NAIC's reporting of complaints by coverage type and by reason for the complaint, the evidence is indisputable.

Americans for Asset Protection advocates for consumers' rights to an effectively regulated annuity marketplace fostering financial independence through guaranteed and insured asset protection products.

The NAIC reportsⁱ that life and annuity complaints are among the lowest of all complaints by coverage type. More granularly, fixed indexed and fixed rate annuities, despite their impressive popularity and growth, show that annuities represent about 1/10th of a percent of all complaints and between a minimal 1% and 2% of the complaints of their coverage type.

Type of Coverage	2017		2016		2015		2014	
	Count	% of Total						
Life & Annuity	8,625	7.42%	9,905	7.05%	7,408	5.83%	6,930	7.00%
Total	116,235		140,439		127,167		98,949	
Fixed Indexed % of Total	97	0.08%	148	0.11%	100	0.08%	101	0.10%
Fixed Rate % of Total	193	0.17%	206	0.15%	148	0.12%	143	0.14%
Fixed Indexed % of Coverage Type		1.12%		1.49%		1.35%		1.46%
Fixed Rate % of Coverage Type		2.24%		2.08%		2.00%		2.06%

Analyzing the data even further using the NAIC publicationⁱⁱ on the reasons for the complaints, suitability doesn't even rise to the top ten reasons for a complaint. In fact, as the chart below shows, between 2014-2017 suitability complaints accounted for a miniscule number of complaints compared to the total of all complaints.

	2017	2016	2015	2014
Total Complaints by Reason Code	77,534	93,083	83,947	68,071
Suitability	112	186	153	195
Percentage of Total	0.14%	0.20%	0.18%	0.29%

These reports are an outstanding demonstration of effective regulation of the 2010 Suitability Model and the steady regulatory oversight provided by state insurance commissioners. In addition, the data illuminates the efforts by insurance companies, marketing intermediaries and insurance professionals to establish procedures, practices and training to adhere to and comply with the suitability standard of care.

Implant a “Best Interest” Standard of Care

According to the ERISA experts at the Department of Labor, the best interest standard has two chief components: Prudence and Loyalty.



“Under the prudence standard, the advice must meet a professional standard of care as specified in the text of the exemption.”

“Under the loyalty standard, the advice must be based on the interests of the customer, rather than the competing financial interests of the adviser or firm.” That means the advisor may not charge more than reasonable compensation or make any misleading statements about investment transactions, compensation, and conflicts of interest.

The NAIC recognized this distinction in its [12/6/17 update on the DOL Fiduciary Rule](#), stating the DOL exemption requires the “advisor or advisers to adhere to impartial conduct standards to give advice in the best interest of the client, receive no more than reasonable compensation and make appropriate disclosures, among other requirements.”

It appears that both the DOL and the NAIC agree that prudence and loyalty incorporate three distinct activities:

1. The duty of prudence requires that the advisor adopt practices and processes necessary to make recommendations that are suitable and in the consumer’s best interest.
2. The duty of loyalty requires that the advisor;
 - a. manage conflicts of interests that are inherent when an advisor receives payment for advice leading to a purchase decision; and,
 - b. provide fair and full disclosure of all pertinent information and unavoidable conflicts that would help the consumer in determining if a recommendation is in their best interest.

Suitability and the requirements of the 2010 Suitability Model is the foundation of prudent impartial conduct and fiduciary duties. Therefore, we strongly urge the NAIC to limit changes to administrative corrections and to avoid marketplace disruption and confusion impacting impact consumers; as well as creating enormous industry expense incurred by overhauling administrative systems and protocols that are demonstrably working.

Attach New and Additional Disclosure Requirements

The two components of loyalty - managing conflicts of interest and providing full disclosure - are substantive and significant. AAP is most concerned about the draft’s new and additional disclosure requirements. First and foremost, AAP believes that consumers should know all the information that would help them understand the products benefits and limitations and make their own determination if the recommendation is in their best interest.



In addition, the consumer should be knowledgeable of the financial or insurance professional's credentials, background, regulatory history and compensation/fee structure **before** they agree to share private and personal information about their finances and the assets they hold or to act on a recommendation.

Distinctively, AAP believes that this information is critical for consumers considering **any type of asset protection product**; including, but not limited to, life insurance, long term care or annuities.

The other major concern AAP has with the new disclosure requirements is that it is a massive expansion of the Department of Labor's Transitional Rule disclosure requirements. These new requirements will result in two sets of disclosure paperwork given to consumers when recommendations involve qualified funds.

Additionally, we do not know yet what the disclosure requirements will be in the DOL's final rule or what the SEC may require in their expedited work on their own rule. Multiple disclosures that differ by license and regulator is not helpful to consumers.

AAP emphatically believes that consumers should be fully informed before making any financial product purchase. Unfortunately, piling disclosures on top of disclosures on top of disclosures is just smothering the consumer with paperwork and will end up having a perverse impact. The overwhelming mountain of paper outlining conditions, qualifiers and warnings; written in confusing legal language will most likely only serve to protect the insurance industry. That leaves consumers confused and, doubtless, deterred from making important decisions about their future.

Given the arguments outlined above, we strongly recommend that the proposed changes to the 2010 Suitability Model be limited to modifications that do not substantively or materially impact the current regulation or cause unnecessary disruption to today's annuity marketplace. A Guidance Memo outlining the NAIC's best interest definition and best practices related to prudent processes for understanding consumers needs and evaluating products to meet those needs would be useful to guide advisors and agents and to help consumers considering an annuity. A Guidance Memo would also serve to effectively communicate fiduciary standards and requirements during the interim period while the DOL and SEC are finalizing their fiduciary requirements.

Compensation is a fundamental and substantial aspect of the loyalty duty under impartial conduct regarding any insurance advice, and it is best not to implant it into a model law dealing with annuity suitability standards. Specifically, non-cash compensation is rarely related to a



single product recommendation or even a specific product type. Most non-cash compensation arrangements involve many coverage types and can even span multiple insurance companies. Inserting non-cash compensation disclosure with annuity suitability is incongruous and lacking. Disclosure, including compensation disclosure, would be better addressed in a separate initiative.

In consideration of that initiative, we urge the NAIC to avoid arbitrarily assigning a value (e.g., 3% or \$100) without any substantiated and reliable consumer research regarding what information consumers require to determine if compensation is reasonable and the recommendation is suitable and in their best interest.

AAP has long been supportive of a Best Interest and Reasonable Compensation Initiative that would allow researchers in Texas Tech University's Department of Personal Financial Planning to study what best interest means from the customer's and advisor's perspectives. AAP believes the financial services and insurance industries, including those who regulate them, will be helped by a better understanding of what it means to the consumer to advise in their "best interest" and what factors are important when determining "reasonable compensation."

The loyalty element of Impartial Conduct Standards, including management and mitigation of conflicts of interest, advisors' obligations to best interest considerations and compensation arrangements and non-cash compensation as well as full and fair disclosure are critical issues for consumers and go far beyond annuities. Addressing them in a newly formed initiative would achieve the best outcome for consumers and, in coordination with the SEC and the DOL, would ensure seamless adaptation that is transparent to the consumer and consistent between licensees and products.

Thank you for your consideration of our comments. Any questions may be submitted to Kim O'Brien at 480-470-2378 or kim@aapnow.com

Respectfully Submitted,



Kim O'Brien, CEO & Vice Chair
AAP Board of Directors

ⁱ Closed Confirmed Consumer Complaints by Coverage Type; 1990 - 2017 National Association of Insurance Commissioners; December 29, 2017.



ii Reasons Why Closed Confirmed Consumer Complaints Were Reported; 1990 - 2017 National Association of Insurance Commissioners; December 29, 2017.

