

2020

CEFLI  
VIRTUAL  
SUMMIT  
MEETING

LIFE  
INSURERS

REGULATORS

INDUSTRY  
EXPERTS

2020 NAIC Suitability in Annuity Transactions Model Regulation  
Emerging and Dynamic Sales Standards

*cefli*



COMPLIANCE & ETHICS FORUM FOR LIFE INSURERS

The **CEFLI Virtual Summit Meeting** consists of five sessions:

- Session 1: Emerging & Dynamic Sales Standards
- Session 2: Diving into Disclosures
- Session 3: Training Tactics and Tribulations
- Session 4: Insurer New Business Processes
- Session 5: Oversight & Supervision



All sessions address aspects of the 2020 NAIC Suitability in Annuity Transactions Model Regulation.

Session content (presentation and the recorded webinar) can be found on CEFLI's website ([www.CEFLI.org](http://www.CEFLI.org)).

# Presenters

## EMERGING and Dynamic SALES STANDARDS



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*President & CEO*  
CEFLI



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*Vice President*  
CEFLI

# Agenda

## EMERGING and Dynamic **SALES** STANDARDS

- Evolution of the Model
- The Impetus for Change
- Comparison—SEC Regulation Best Interest vs. NAIC Model
- Final Thoughts

# Evolution of the Model

## Early Deliberations - 2000

- 1998-2000 – The NAIC worked on a White Paper to recommend the establishment of suitability standards for life insurance and annuities.
- Regulators, industry and consumers work together to develop the White Paper.
- The White Paper led to the development of a Model Act and Regulation that pertained to both life insurance and annuity products.

# Evolution of the Model

## Early Deliberations - 2000

- Regulators, industry and consumers had serious concerns about the application of suitability standards generally and, specifically, related to both life insurance and annuity products.
- One of the very few issues over the past 20 years and insurance regulation that generated opposition from regulators, industry and consumers.
- Decision was made to narrow the scope of the Model Regulation to address annuity products only.

# Evolution of the Model

## Early Deliberations - 2000

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- Primary regulatory concern in the marketplace at the time related to Sales to Seniors.

# Evolution of the Model

## 2003 Version

- In 2003, the NAIC adopted the first version of a Suitability Model Regulation – the Senior Protection in Annuity Transactions Model Regulation.
- The Model Regulation applied to annuity sales to consumers age 65 and above.
  - There was extensive discussion concerning what age would constitute a “senior.” Ultimately, the NAIC confirmed age 65 and above.

# Evolution of the Model

## 2006 Version

- As the Senior Protection in Annuity Transactions Model Regulation was adopted by the states, regulators observed increased complaints associated with sales of annuities to all consumers – – not just those age 65 and above.
- To address these concerns, the NAIC revised the Senior Protection in Annuity Transactions Model Regulation to expand the Model's protection to all consumers.

# Evolution of the Model 2006 Version

- The name of the Model Regulation was changed from:
  - The Senior Protection in Annuity Transactions Model Regulation.
- To:
  - The Suitability in Annuity Transactions Model Regulation.

# Evolution of the Model

## 2010 Version

- 2008 – Concerns continued in the marketplace regarding the assignment of responsibility for unsuitable sales transactions.
- The NAIC discussed possibly issuing a Model Bulletin to address these concerns.
- The Annuity Suitability (A) Working Group began exploring possible revisions to the 2006 version of the Model Regulation.

# Evolution of the Model

## 2010 Version

- 2010 – The NAIC adopts revisions to the NAIC Suitability in Annuity Transactions Model Regulation.
- Three key areas:
  - Insurers are responsible for compliance with the Model Regulation even if the sale takes place through a third-party distributor;
  - Insurers are required to have a process to review all recommended annuity transactions; and
  - General and specific-product training were required.

# Evolution of the Model DOL Fiduciary Rule

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- April 2015 – The US Department of Labor (DOL) proposed a new fiduciary regulation.
- The fiduciary regulation, known as the “DOL Fiduciary Rule,” expanded the definition of “investment advice fiduciary” under the Employee Retirement Income Security Act of 1974 (ERISA).

# Evolution of the Model DOL Fiduciary Rule

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- All financial professionals who made recommendations to retirement plans or provided retirement planning advice were considered to be “fiduciaries” and were required to comply with the Rule.
- Life insurance companies devoted significant human and financial resources to realign their existing practices to comply with the requirements of the Rule.

# Evolution of the Model DOL Fiduciary Rule

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- The NAIC leadership suggested that it might be appropriate to reconvene the NAIC Annuity Suitability (A) Working Group to explore whether the Model Regulation should include fiduciary standards.
- (The DOL Fiduciary Rule was vacated in a decision by the Fifth Circuit in June 2018.)

# Evolution of the Model Fiduciary Laws and Regulations in the States

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- As a result of the issuance of the DOL Fiduciary Rule, several states introduce legislation to develop unique fiduciary laws applicable to sales of financial products within their states.
- These legislative proposals, if enacted, would establish a “patchwork quilt” of different fiduciary laws and regulations in various states.

# Evolution of the Model

## New York Regulation 187

- The New York Department of Financial Services (NYDFS) began exploring amendments to its Regulation 187 (New York's version of the NAIC Suitability in Annuity Transactions Model Regulation) which applied solely to annuity products.
- The proposed amendments to Regulation 187 would be applicable not only to annuity products only but to life insurance products as well.

# Evolution of the Model

## New York Regulation 187

- The amendments to Regulation 187 were approved and issued by the NYDFS in July 2018.
- The amendments to Regulation 187 introduced a “best interest” standard applicable to the sale of both life insurance and annuity products.
- This was the first time that a “best interest” standard (rather than a suitability standard) became applicable to the sale of annuity and life insurance products.

# Evolution of the Model

## SEC Regulation Best Interest

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- In light of the issuance of the DOL Fiduciary Rule, the US Securities and Exchange Commission (SEC) was under pressure to develop a comprehensive rule that would apply “best interest” or “fiduciary” principles to securities transactions for retail customers.
- In June 2019, the SEC adopted Regulation Best Interest.

# Evolution of the Model

## SEC Regulation Best Interest

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- Regulation Best Interest is premised upon several core obligations including:
  - Disclosure Obligation;
  - Care Obligation;
  - Conflict of Interest Obligation; and
  - Compliance Obligation.

# Evolution of the Model Emergent and Divergent Industry Standards

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- Given the emergent and divergent landscape for sales standards impacting the life insurance industry, the NAIC chose to revise its NAIC Suitability in Annuity Transactions Model Regulation to incorporate many of the elements of the SEC's Regulation Best Interest without moving to incorporating life insurance (similar to New York's Regulation 187).

# Comparison SEC Regulation Best Interest vs. NAIC Model

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Scope of the Regulation	NAIC	SEC
Applies to recommendations (even in the absence of a sale)		X
Applies to sales		X
Applies to recommendations directly to consumers		X
Applies to recommendations directly to institutions, employers, etc.		
Applies to fixed (including indexed) annuities		X
Applies to variable annuities		X
Applies to non-annuity securities recommendations		
Applies to new purchases (including exchanges and replacements)		X
Applies to recommendations impacting existing products (no new product sale)		
Applies to recommendations regarding investment strategies (even if a specific product is not recommended or sold)		X

*Red text highlights key differences in scope.*

# Comparison SEC Regulation Best Interest vs. NAIC Model

Disclosure Requirements: Material facts regarding the terms of the producer's or the registered representative's (RR) relationship with the consumer:	NAIC		SEC	
	Written	Written or Verbal	Written	Written or Verbal
• That the broker, dealer or natural person is acting as a broker, dealer, or an associated person			X <sup>^^</sup>	
• Material fees and costs associated with the recommendation		X	X <sup>^^</sup>	
• The type and scope of services to be provided to the consumer, including any limitations in the recommendations that can be provided	X <sup>^</sup>		X <sup>^^</sup>	
• Product features, non-guaranteed elements, limits on returns, risk, etc.		X		X
• Any material conflicts of interest		X	X	
• The basis of the recommendation		X		
• The types of products the producer or RR is authorized to sell/scope of services	X <sup>^</sup>		X	
• Information regarding whether the produce or RR is authorized, contracted with, or otherwise able to sell for, limited or multiple insurers	X <sup>^</sup>			

<sup>^</sup> Use NAIC model "[Appendix A](#)" or a substantially similar form.

<sup>^^</sup> Use [Form CRS](#); requires prior approval via a filing.

# Comparison SEC Regulation Best Interest vs. NAIC Model

Disclosure Requirements (continued): Material facts regarding the terms of the producer's or the registered representative's (RR) relationship with the consumer:	NAIC		SEC	
	Written	Written or Verbal	Written	Written or Verbal
• The sources and types of cash and non-cash compensation to be received and the source	X <sup>^</sup>			
• The consumer's right to request additional information regarding cash compensation	X <sup>^</sup>			
• If requested by the consumer, disclose additional compensation information (i.e. an estimate, the frequency, etc.)		X		
• Disclose certain information, under client signature, if the consumer refuses to provide sufficient financial information	X <sup>^^</sup>			
• Disclosure certain information, under client signature, if the consumer requests a purchase that was not recommended	X <sup>^^^</sup>			

<sup>^</sup> Use NAIC model "[Appendix A](#)" or a substantially similar form.

<sup>^^</sup> Use NAIC model "[Appendix B](#)" or a substantially similar form.

<sup>^^^</sup> Use NAIC model "[Appendix C](#)" or a substantially similar form.

# Comparison SEC Regulation Best Interest vs. NAIC Model

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Care Obligation:	NAIC	SEC
<ul style="list-style-type: none"><li>Exercise reasonable diligence, care and skill and have a reasonable basis to believe the transaction (or transaction series) is in the consumer's best interest when considering the consumer's profile information/investment profile information, the risks, the rewards, the costs, etc., without placing the producer's, RR's or other parties' interests ahead of the consumer's interests</li></ul>	X	X

The care obligation standard is not a fiduciary standard but greatly heightens the prior suitability standard.

# Comparison SEC Regulation Best Interest vs. NAIC Model

## Conflict of Interest:

The insurer, broker, or dealer must establish, maintain, and enforce written policies and procedures reasonably designed to:

	NAIC	SEC
<ul style="list-style-type: none"> <li>Identify, eliminate or disclosure any material conflicts (i.e. conflicts that may influence the producer's or RR's recommendation)</li> </ul>	X	X
<ul style="list-style-type: none"> <li>Identify and mitigate conflicts of interest that could create an incentive for a producer or RR to not act in the consumer's best interest</li> </ul>	X	X
<ul style="list-style-type: none"> <li>Identify and disclose any material limitations on securities or investment strategies, and conflicts with such limitations</li> </ul>	X*	X
<ul style="list-style-type: none"> <li>Prevent any material limitations on securities and investment strategies from causing the recommendations not in the best interest</li> </ul>		X
<ul style="list-style-type: none"> <li>Identify and eliminate sales contests and quotas, bonuses, and non-cash compensation for the sale of specific products in a period</li> </ul>	X	X

\* Somewhat implied by the "[Appendix A](#)" disclosure on product and affiliation limitations.

*Red text highlights key differences in scope.*

# Comparison SEC Regulation Best Interest vs. NAIC Model

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Compliance Obligation	NAIC	SEC
Establish, maintain and enforce procedures reasonably designed to support compliance with the regulation	X	X

# Final Thoughts

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CEFLI values your feedback! Please complete the short (2-3-minute) survey located at:

<https://www.surveymonkey.com/r/CEFLISummit1>

The survey will remain open until June 1, 2020.

Thank you for your support of CEFLI.

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