

CEFLI VIRTUAL SUMMIT MEETING:

Revisions to the NAIC Suitability in Annuity Transactions Model Regulation

VIRTUAL SUMMIT MEETING

Resource Materials



April 2020

Suitability in Annuity Transactions Model Regulation **Readiness Checklist**

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Readiness Checklist

The NAIC adopted a revised Suitability in Annuity Transactions Model Regulation on February 13, 2020. Insurers must comply with the requirements of the revised Model by the compliance date associated with each state’s adoption of the revised Model Regulation.

This document highlights some of the activities insurers may wish to consider as they work to implement strategies to support compliance with the revised NAIC Model Regulation.

This document is intended to provide a high-level overview and does not constitute legal advice.

Q1. Has the company created and/or revised the disclosures and other forms required by the Model Regulation?

The NAIC Model Regulation requires that producers collect “Consumer Profile Information” and that they disclose specific information to the consumer. In some cases, the Model Regulation mandates certain disclosures be provided in writing and it prescribes the format of such disclosures. In other cases, the Model Regulation allows producers and insurers the discretion to decide whether such disclosures will be verbally communicated or provided in writing. The checklist below may be helpful to insurers as they work to implement the disclosure requirements of the revised NAIC Model Regulation.

#	Completed	Not Completed	Not Applicable	Consumer Disclosure and Forms	Reference
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Consumer Profile Information. The producer must collect the Consumer Profile Information specified by the revised Model Regulation.	5.C., 6.A.(1)(e)
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Basis of the recommendation. The producer must communicate the basis of the recommendation to the consumer. The producer must also make a written record of any recommendation and the basis for the recommendation.	6.A.(1)(a)(iv), 6.A.(4)(a)
3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scope and terms of the relationship/role of the producer. The revised Model Regulation requires the use of an “Insurance Agent (Producer) Disclosure for Annuities” form (Appendix A).	6.A.(2)(a)(i), Appendix A
4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Specific products the producer is authorized to sell. The revised Model Regulation requires the use of an “Insurance Agent (Producer) Disclosure for Annuities” form (Appendix A).	6.A.(2)(a)(ii), Appendix A
5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Statement describing the insurers the producer is authorized to sell products for. The revised Model Regulation requires the use of an “Insurance Agent (Producer) Disclosure for Annuities” form (Appendix A).	6.A.(2)(a)(iii), Appendix A

6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Description of the sources and types of cash compensation and non-cash compensation to be received by the producer. The disclosure must state whether the producer is to be compensated for the sale of a recommended annuity by commission or as part of premium or other remuneration received from the insurer, intermediary or other producer by fee or as a result of a contract for advice or consulting services. The revised Model Regulation requires the use of an “Insurance Agent (Producer) Disclosure for Annuities” form (Appendix A).	6.A.(2)(a)(iv), Appendix A
7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Statement regarding the consumer’s right to request additional information regarding cash compensation. The revised Model Regulation requires the use of an “Insurance Agent (Producer) Disclosure for Annuities” form (Appendix A).	6.A.(2)(a)(v), Appendix A
8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Additional compensation information. Upon request by the consumer for more information regarding producer compensation, the producer shall disclose: <ol style="list-style-type: none"> 1. A reasonable estimate of the cash compensation to be received by the producer (may be stated as a range of amounts or percentages); and 2. Whether the compensation is a one-time or multiple occurrence, the amount (may be stated as a range of amounts or percentages), and the frequency of the occurrence. 	6.A.(2)(b)(i)-(ii)
9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Features of the annuity. Inform the consumer of the various features of the annuity, such as: <ol style="list-style-type: none"> 1. The potential surrender period; 2. The potential surrender charge; 3. The potential tax penalty (if selling, exchanging or annuitizing); 4. Morality and expense fees; 5. Investment advisory fees; 6. Any annual fees; 7. Potential charges for and features of riders or other options; 8. Limitations on interest returns; 9. Potential changes in non-guaranteed elements of the annuity; 10. Insurance components; 11. Investment components; and 12. Market risk. 	6.A.(2)(c)
10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	“Consumer Refusal to Provide Information” (Appendix B). The form is required if the consumer refuses to provide Consumer Profile Information or if such information is insufficient. The form must be signed by the consumer and a copy of the record must be maintained by the producer and/or the insurer.	6.A.(4)(b)(i)-(ii), Appendix B
11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	“Consumer Decision to Purchase an Annuity NOT Based on a Recommendation” (Appendix C). The form must be used if the consumer elects to purchase an annuity that was not recommended. The form must be signed by the consumer and the producer. A copy of the record must be maintained by the producer and/or the insurer.	6.A.(4)(c), Appendix C

Q2. Has the company acted to fully integrate revised and/or new forms?

In addition to creating or revising existing forms and disclosures, related activities may be necessary. Insurers may wish to consider whether the following actions are relevant to their business models and practices.

#	Completed	Not Completed	Not Applicable	Consumer Disclosure and Forms-Related Activity Description
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Filing of Forms. If revisions were made to existing forms previously filed with regulators, the revised forms have been refiled with regulators.
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Computer Data Entry Screens. If computer data entry screens are used to collect and populate computer applications and forms, such screens have been updated as/if needed.
3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Data Feeds. If the data collected on new or revised forms will be retained in the company's customer information database, automated suitability review tools, etc., data feeds (for companies using electronic applications) have been programmed to populate such company systems.
4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Record Retention. A record retention schedule been identified and communicated regarding the disclosure forms utilized and the Customer Account Information collected.
5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Good Order. Operations staff understand what disclosure materials or completed forms are required for a new business case to be in 'good order.'
6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Producer Education. Producers have been informed of revisions to existing forms and/or the creation of new forms or disclosures. They have been instructed to destroy existing forms inventory in favor of using the new or revised versions of such forms.

Q3. Has the company revised its systems for ensuring producer training requirements are satisfied?

The Revised Model Regulation requires that producers have adequate knowledge of the annuities offered by the insurer (Section 7.A.) and that the producer satisfy the one-time, state-required training element of the Model (Section 7.B.).

Existing producers who previously completed the 4-hour state-required training can either: 1.) complete a new 4-hour course; or 2.) complete a new 1-hour course. Newly licensed producers should complete the updated version of the 4-hour course. Insurers will need to have appropriate controls in place to manage for this more complex, bifurcated training option.

Insurers may wish to consider whether the following actions are relevant to their business models and practices.

#	Completed	Not Completed	Not Applicable	Training-Related Activity Description
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Process for Newly Licensed Producers. New producer onboarding materials and instructions align with the requirements of the revised Model Regulation in states that have adopted the revised Model.
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Process for Veteran Licensed Producers. Veteran (existing) producers are aware of actions they must take in order to submit new annuity business in states that have adopted the revised Model. Distributors have also been informed of such requirements.
3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Producer Training Manuals Have Been Updated. Producer training manuals, checklists, intranet sites, and other job aids have been updated to reflect requirements in this area.
4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Distributor Communications. Distributors and strategic partners have been informed of the updated requirements.
5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Operations Staff. Company operations staff (and contracted third parties) are aware of any new 'good order' requirements when new business is received from a producer in a state that has adopted the revised Model.
6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Company Annuity Product Training. The company has considered whether updates are needed regarding its approach for training producers, and/or whether updates are needed to the training materials the insurer makes available to producers regarding the annuities underwritten by the insurer.

Q4. Has the company developed and distributed producer communications regarding the revised model?

The requirements of the revised NAIC Model Regulation will necessitate material instruction and communication to producers. Insurers may wish to consider whether the following communications or updates to existing producer materials will be needed, along with the methods that will be utilized to inform producers and distributors of updated requirements.

#	Completed	Not Completed	Not Applicable	Producer Communication Activity Description
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Changes to the Training Requirements. Producers will need to be informed of the annuity training requirements that must be satisfied before soliciting an annuity and the consequence (e.g. business rejected) of untimely training completions.
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Changes to the Sales Process. Producers will need to be informed of any updates to the sales process including: <ol style="list-style-type: none"> 1.) What to Provide: Disclosures required to be provided to the consumer. 2.) What to Collect: Information to be collected from the consumer. 3.) What to Consider: What “Best Interest” means (including the duties of care, disclosure, conflict of interest avoidance and disclosure, and documentation) and related expectations of the insurer. 4.) What to Submit: Information or forms required to be submitted with a new business application. 5.) What to Expect: Any changes or updates to the insurer’s (or contracted third party’s) suitability review processes and/or related supervisory procedures. 6.) What to Retain: Any changes to the documentation and record-keeping requirements of the producer. 7.) What to Avoid: Producers must identify and avoid or reasonably manage and disclose any material conflicts of interest.
3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Changes to Producer Resource Materials: Producer resource materials (e.g. producer training manuals, intranet sites, checklists, job aids, new producer training materials, etc.) will need to be updated to align with the requirements of the revised NAIC Model Regulation.

Q5. Has the company updated its policies and procedures related to its suitability review processes, its compliance oversight practices, and its general producer supervisory controls?

The requirements of the revised NAIC Model Regulation will necessitate updates to policies and procedures related to the insurer’s (or the contracted third party’s) suitability review processes, the insurer’s compliance oversight practices, and to general producer supervisory controls. Insurers may wish to consider whether the following actions will be needed.

#	Completed	Not Completed	Not Applicable	Suitability, Compliance Oversight, and Supervisory Activity Description
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Suitability Review Processes. The insurer (and/or contracted third party) has considered any changes needed to existing new business suitability review processes and has implemented and communicated such changes to impacted parties (e.g. producers, distributors, other supervisors, operations staff, compliance oversight staff, etc.). The system must support the revised Model Regulation’s requirement that there be “...a reasonable basis to believe the annuity would effectively address the particular consumer’s Consumer Profile Information.” [Reference: Section 6.C.(1)]</p>
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>System of Supervision. The insurer (and/or contracted third party) has established and maintained a system of supervision that is reasonably designed to achieve the insurer’s and the producer’s compliance with the revised Model Regulation including the following [Reference: Section 6.C.(2)(a)-(g)]:</p> <ol style="list-style-type: none"> 1.) Inform Producers. Inform producers of the requirements of the regulation and incorporate the requirements into producer training manuals. 2.) General Annuity Training. Establish and maintain standards related to the general annuity training requirement (i.e. the state-required 4-hour/1-hour training components). 3.) Product Training. Provide product-specific training materials regarding the insurer’s products. 4.) Review of Each Recommendation. Establish and maintain procedures for the review of each recommendation to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer’s financial information, insurance needs, and financial objectives. 5.) Detect Recommendations Not in Compliance. Establish and maintain reasonable procedures to detect transactions not in compliance. Such procedures could include: confirmation of Consumer Profile Information, consumer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring. 6.) Validation of Disclosures to Consumers. Establish and maintain reasonable procedures to assess, prior to or upon issue or delivery of an annuity, whether the producer has provided the consumer with information required to be provided by the regulation. 7.) Identify Suspicious Transactions. Establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide Consumer Profile Information.

3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sales Contents and Quotas. The insurer has established and maintained reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses and non-cash compensation based on the sale of specific annuities within a limited period of time. [Reference: Section 6.C.(2)(h)]
4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Conflicts of Interest. Related to the above, the insurer has controls in place to help producers identify and avoid or reasonably manage and disclose material conflicts of interest. [Reference: Section 6.A.(3)]
5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Annual Written Report. The insurer annually provides a written report to management, including the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and the corrective action taken. Insurers may wish to consider whether additional annual report narrative may be appropriate considering the substantive changes made to the revised NAIC Model Regulation. [Reference: Section 6.C.(2)(i)]
6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Compliance Testing and Oversight. Insurers may wish to evaluate whether additional compliance testing and oversight controls may be prudent considering the substantive changes made to the revised NAIC Model Regulation. [Reference: Section 6.C.(2)(i)]
7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Contracted Functions. The insurer's system of supervision includes supervision of any contracted functions, including related monitoring and audits to ensure the contracted function is properly performed. Additionally, the insurer must annually obtain a certification from a senior manager responsible for the contracted function, certifying that the function is properly performed. [Reference: Section 6.C.(3)(b)]
8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Safe Harbor. Insurers relying on the safe harbor provision of the Model Regulation monitor the performance of financial professionals relying on the safe harbor and they provide to the entity responsible for supervising such financial professionals, information and reports that are reasonably appropriate to assist such entity with maintaining its system of supervision. [Reference: Section 6.E.(3)(a)-(b)]
9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Record Retention. The insurer and its producers have systems in place to support the recordkeeping requirements of the Model Regulation. [Reference: Section 9.A.]

This document is designed to offer a Readiness Checklist related to some of the key compliance implementation considerations associated with the 2020 version of the NAIC Suitability in Annuity Transactions Model Regulation for the benefit of CEFLI's members. The document does not constitute legal advice.