

Agenda

CEFLI Compliance & Ethics Committee Meeting
Wednesday, September 16, 2020
2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT
Dial In: (800) 239-9838
Passcode: 5690858

- I. **Welcome and Introduction.** **Donald J. Walters**
 - A. Antitrust Statement.
- II. **Approval of Minutes – August 12, 2020 Meeting.** **The Committee**
- III. **Issues for Review.** **The Committee**
 - A. Coronavirus (COVID-19).

CEFLI's COVID-19 Networking Forum continues to meet on a regular basis and has agreed to meet monthly over the weeks ahead.

The next meeting of CEFLI's COVID-19 Networking Forum is scheduled to take place on Thursday, October 8 at 3 PM EDT/2 PM CDT/1 PM MDT/12 Noon PDT. Please contact Nancy Perez (NancyPerez@cefli.org) if you or your colleagues would like to be added to the COVID-19 Networking Forum.

CEFLI Affiliate Member Wolters Kluwer provides a free daily email that outlines significant COVID-19 related regulatory changes. For those who may be interested, the link to sign up is: <http://www.wolterskluwerfs.com/COVID-19-updates.aspx?wkcid=20.04> [AM](#) [CS](#) [EN](#) [WKFS](#) [RCM](#)

Additionally, CEFLI Affiliate Member Locke Lord provides a complimentary COVID-19 subscription option covering a variety of legal aspects (not just insurance-related impacts). The link to sign up is: <https://www.lockelord.com/newsandevents/subscribe> Locke Lord also maintains a comprehensive COVID-19 Resource Center, which is linked here: <https://www.lockelord.com/covid19resourcecenter>

The Committee will be asked to discuss any operational compliance challenges associated with issues arising out of the COVID-19 pandemic. Also, the Committee will be asked to discuss whether their companies have announced plans regarding “return to work” strategies over the weeks and months ahead.

B. Cross Border Sales.

The topic of “cross border sales” has been a perennial subject of compliance discussions.

These issues often arise in localities with access to adjacent jurisdictions where an agent may be registered in State A but solicits a transaction in State B though he/she may not be appropriately licensed to conduct business with residents of State B. “Cross border sales” issues may also arise in instances in which an application for a life insurance company product is signed in a state other than the resident state of the applicant.

Recognizing that sales in today’s COVID-19 pandemic environment may involve individuals who may have been dislocated from their permanent residence and also recognizing that companies are increasingly pursuing electronic measures to conduct business through the use of DocuSign or other electronic signature platforms, a question has been presented concerning whether life insurance company policies and procedures pertaining to “cross border sales” have been modified to accommodate the changed circumstances of the COVID-19 pandemic environment.

The Committee will be asked to discuss whether their practices with respect to “cross border sales” have been modified to accommodate the changed circumstances of the COVID-19 pandemic environment.

C. Cannabis-Related Business Issues.

Several months ago, the Committee discussed issues associated with conducting life insurance company product business with cannabis-related businesses. Specifically, our discussions focused on company practices with respect to allowing products to be purchased with money derived from cannabis-based businesses and whether product application forms included questions regarding whether the source of funds to purchase a particular product may be derived from cannabis-based businesses.

While practices in this area are continuing to evolve, our discussion earlier this year indicated that most life insurers do not accept business from cannabis-based businesses due to federal government guidelines that continue to list cannabis as a Schedule I controlled substance; notwithstanding state laws to the contrary.

Nevertheless, life insurance companies are continuing to receive inquiries concerning the purchase of individual life insurance products by individuals who

are growing cannabis legally under state law (in some cases, under a state-sanctioned medical marijuana program).

Therefore, we have received a request to revisit this issue for further input by members of the Committee.

Specifically, the Committee will be asked to discuss:

- *Does your company accept applications for individual life insurance policies from individuals engaged in cannabis-based businesses which are deemed to be legal under applicable state law?*
- *Does your company accept applications for disability income insurance products from individuals engaged in cannabis-based businesses which are deemed to be legal under applicable state law?*

The Committee will be asked to discuss their company's practices with respect to accepting applications for life insurance company products from individuals engaged in cannabis-based businesses which are deemed to be legal under applicable state law.

D. Lapse Notices - Checks Returned for Insufficient Funds.

Questions associated with lapse notices have become more prominent in the COVID-19 pandemic environment. However, questions associated with lapse notices may be presented in scenarios involving non-COVID-19 circumstances as well.

A question has been presented concerning company practices with respect to issuing lapse notices when a premium check is returned for insufficient funds.

In these circumstances, unpaid premium handling does not occur until the check is returned which may not allow enough time to meet requirements for providing a lapse notice unless the company extends the grace period for the policy.

This presents additional questions concerning whether providing longer grace periods to policyholders who write "bad checks" may be deemed to be unfair to other policyholders and may incentivize unwanted behavior.

State laws and regulations provide specific guidelines with respect to the timely issuance of lapse notices. Exceptions to these laws and regulations are generally not available.

These concerns may become more prominent in the current COVID-19 pandemic environment as many individuals may be struggling financially and

many of the state mandates (e.g., Bulletins) or Executive Orders that required companies to provide accommodations to policyholders may be expiring.

The Committee will be asked to discuss their practices with respect to issuing lapse notices to policyholders in the event that they receive a premium check that is returned for insufficient funds.

E. Washington Senate Bill 5165 - Amending Washington's "Law against Discrimination."

In 2019, Washington enacted Senate Bill 5165 to amend sections of Washington's Law Against Discrimination. (See copy attached.)

Under Washington law, it is an unfair practice for any person in connection with insurance transactions to cancel insurance, or to fail or refuse to issue insurance or to fail or refuse to renew insurance...because of citizenship or immigration status.

However, Section 3 of Senate Bill 5165 states:

"It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract."

The question presented to the Committee for discussion concerns whether any life insurance companies have identified any federal or state law, regulation, rule or government contract that would provide a rationale to support a distinction or differential treatment on the basis of citizenship or immigration status.

The Committee will be asked to discuss whether their companies have identified any federal or state law, regulation, rule or government contract that would serve as a "carveout" to the Washington law that deems it an unfair practice to cancel insurance, fail or refuse to issue insurance or fail to refuse to renew insurance because of citizenship or immigration status.

F. Maintaining a Culture of Compliance in a Work-at-Home Environment.

Over the past several months, most life insurance companies have offered opportunities for their employees to work-at-home in light of the COVID-19 pandemic environment.

These developments may impact the sense of camaraderie that may be available when individuals are working closely in an in-person setting at a life insurance company. For example, many compliance leaders report that one of their most

effective tools is the ability to “walk the floor” and have discussions with their compliance colleagues concerning contemporary compliance challenges facing their company.

Accordingly, questions have been presented concerning steps companies may be taking to continue to promote and maintain a culture of compliance among members of their staff who may be operating in a work-at-home environment.

Issues presented for discussion include:

- *Has your company instituted any new or unique strategies to continue to foster a culture of compliance in a work-at-home environment?*
- *Are you continuing to take steps to promote a culture of compliance notwithstanding the challenges of the COVID-19 pandemic environment?*
- *Are there any concerns regarding increased instances of fraud or other questionable activities from employees or agents forced to operate in a work-at-home environment?*

The Committee will be asked to discuss their company’s practices designed to promote and maintain a culture of compliance among members of their staff who may be operating in a work-at-home environment.

G. New NACHA Web Debit Account Validation Rule.”

As of March 19, 2021, the NACHA Web Debit Account Validation Rule will contain enhanced fraud prevention requirements and companies may be working to develop solutions to support compliance with the new requirements. The revised rule may impact companies in different ways. For example, do companies believe they already comply with the [revised rule](#)? Or are companies planning to enhance their current processes to meet the new requirements by March of 2021? And, if so, in what way?

The Committee will be asked to discuss the extent to which they have reviewed the new requirements and assessed current procedures, to determine future action that may be needed.

IV. Reporting Items.

CEFLI Staff.

- A. Adoptions of the Revised NAIC Suitability in Annuity Transactions Model Regulation.

CEFLI continues to monitor developments related to possible adoptions of the revised NAIC Suitability in Annuity Transactions Model Regulation in various states.

Arizona and Iowa have been two leading states to be early adopters of the revised version of the NAIC Suitability in Annuity Transactions Model Regulation.

It is anticipated that other states will be introducing similar legislation/regulations over the next several months.

More recently, Rhode Island introduced its version of the revised Model Regulation. (See copy attached.)

CEFLI will continue to monitor further adoptions of the revised NAIC Suitability in Annuity Transactions Model Regulation in states over the months ahead.

- B. NAIC Annuity Suitability (A) Working Group Seeks Comments on Frequently Asked Questions - Revised NAIC Suitability in Annuity Transactions Model Regulation.

The NAIC Annuity Suitability (A) Working Group is seeking comments on the most recent draft of Frequently Asked Questions concerning implementation of the revised version of the NAIC Suitability in Annuity Transactions Model Regulation. (See copy attached.)

Comments on the Frequently Asked Questions document must be submitted to Jolie Matthews (jmatthews@naic.org) at the NAIC on or before Friday, October 2, 2020.

V. CEFLI Activities.

- A. Webinar - 2020 CEFLI Compliance & Ethics Benchmarking Survey.

On August 26, Carla Strauch, CEFLI's Vice President-Compliance & Ethics, conducted a webinar to review the highlights of CEFLI's 2020 Compliance & Ethics Benchmarking Survey. Thank you, Carla!

A copy of the [slides and audio](#) from the webinar as well as a copy of CEFLI's [2020 Compliance & Ethics Benchmarking Survey](#) can be found on CEFLI's website.

B. Advertising Review Networking Forum.

CEFLI recently conducted a preliminary meeting to determine possible interest in reconstituting its Advertising Review Networking Forum.

If you may have an interest in reconstituting an Advertising Review Networking Forum which may meet periodically to discuss compliance challenges related to Advertising Review issues, please contact Nancy Perez at NancyPerez@cefli.org to indicate your interest.

C. 2020 CEFLI Annual Conference.

CEFLI will be conducting its 2020 Annual Conference on September 23-25 virtually via Cisco Webex. Registration is now open and available via CEFLI's website [here](#).

There is no registration fee for Member company or Affiliate Member representatives to participate in the 2020 CEFLI Annual Conference.

The Annual Conference will include sessions to review:

- COVID-19 Compliance Issues;
- Compliance Risk - Tools, Techniques and Strategies;
- SEC Regulation Best Interest;
- NAIC Suitability in Annuity Transactions Model Regulation;
- Big Data;
- Antifraud;
- Market Regulatory Activities and Future Trends;
- Innovations; and
- Ethics.

You may participate in individual sessions or the entire Annual Conference.

More information concerning the CEFLI Annual Conference will be provided to all registered attendees during the week of September 21.

We hope you will be able to join us!

VI. Next Meeting.

The next meeting of the Committee is scheduled to take place:

Wednesday, October 14, 2020 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Please mark your calendar and plan to join us!

The remaining Committee meeting dates for 2020 will be as follows:

Thursday, November 12, 2020 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Wednesday, December 16, 2020 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

VII. Other Business.

The Committee will be asked to identify and discuss any other business to be brought before the Committee.

DRAFT

**Minutes
Meeting of the
CEFLI Compliance & Ethics Committee
August 12, 2020**

A meeting of the CEFLI Compliance & Ethics Committee (the “Committee”) was held via conference call on Wednesday, August 12, 2020 at 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT.

The following CEFLI member company representatives participated in the meeting:

Tony Poole, AAA Life Insurance Company
Keith Schroeder, American-Amicable Life Insurance Company
Michele Kulish Danielson, American Enterprise Group
Dave Milligan, American Equity Investment Life Insurance Company
Bill Turner, American Fidelity Assurance company
Jason Broussard, American National Insurance Company
Rebecca Criswell, Americo Financial Life and Annuity Insurance Company
Laurie Lewis, Amica Life Insurance Company
Jill Fiddler, Assurity Life Insurance Company
Chad Batterson, Athene Annuity & Life Assurance Company
Jill Jones, Bankers Fidelity Life Insurance Company
Jeremy Intihar, BrightHouse Financial
Maureen Henderson, Brown, Winick, Graves, Gross & Baskerville, PLC
Larry Welch, Citizens Inc
Nancy Sweet, CNO Financial Group
Shannon Aussieker, Country Life Insurance Company
Chris Vellante, Delaware Life Insurance Company
De Keimach, Delaware Life Insurance Company
Emily Kresowik, Equitrust Life Insurance Company
Matt Chisholm, Erie Insurance Group
John Cunningham, Fidelity Investments Life Insurance Company
Laura Bullard, Independent Order of Foresters USB
Sabrina Olander, Independent Order of Foresters USB
Judy Eppich, Guggenheim Life and Annuity Company
Jay Forest, Guggenheim Life and Annuity Company
Jason Klee, Guggenheim Life and Annuity Company
Marla Lacey, Homesteaders Life Company
Laura VanLaningham, Illinois Mutual Life Insurance Company
Heather Russo, Illinois Mutual Life Insurance Company
Kristen Thomas, Jackson National Life Insurance Company

Bart Vitou, Jackson National Life Insurance Company
Tony Dowling, Jackson National Life Insurance Company
Stephen Harris, Lincoln Financial Group
Sally Roudebush, Lincoln Heritage Life Insurance Company
Donna Brown, Lombard International
Michelle Ross, Lombard International
Alison Soderberg, Lombard International
Michele Dungworth, National Life Group
Molly Akin, The Ohio National Life Insurance Company
Lauren Barbaruolo, Oxford Life Insurance Company
Monique Pascual, Pacific Guardian Life Insurance Company, Ltd.
Emmanuelle Brooks, Pacific Life Insurance Company
Andrea Horrobin, Pacific Life Insurance Company
Rania Sarkis, Pacific Life Insurance Company
Vickie Bulger, Primerica Life Insurance Company
Megan Phillips, Principal Life Insurance Company
Ryan Schwoebel, Protective Life Insurance Company
Mark Lasswell, RiverSource Life Insurance Company
Jim Golembiewski, Sagacor Life Insurance Company
Jill Williams, Sammons Financial Group
Deb Cooper, Securian Financial
Kassia Holt, Securian Financial
Kathy Mangum, Southern Farm Bureau Life Insurance
Diane Boyette, Southern Farm Bureau Life Insurance Company
Lisa Holland, State Farm Life Insurance Company
Rachel Gomez, State Farm Life Insurance Company
Donna Hough-Zukas, SunLife
Marcie Allen, Texas Life Insurance Company
Steve Corbly, The Cincinnati Life Insurance Company
Paula Gentry, The Cincinnati Life Insurance Company
Derek Albanese, UNUM Life Insurance Company of America
Liza Perry, USAA Life Insurance Company
Chad Eslinger, VOYA Financial
Kate Blalock, Western & Southern Financial Group
Kara Busener, Western & Southern Financial Group
Briner Ellis, Western & Southern Financial Group
Robert Hopkins, Western & Southern Financial Group
Hannah Krone, Western & Southern Financial Group
Ben Kuebbing, Western & Southern Financial Group
Allison Martinson, Western & Southern Financial Group
Tony Paolucci, Western & Southern Financial Group
Cathy Schwietzer, Western & Southern Financial Group
Molly Swami, Western & Southern Financial Group
Stephanie Tater, Western & Southern Financial Group
Bryan Brewster, Wilton Reassurance Company

Donald J. Walters, President & CEO, Carla Strauch, Vice President - Compliance & Ethics, and Mallory Hart, Director of Member Relations, Communications and Meetings, also attended the meeting.

I. Welcome and Introduction.

The meeting began with a recitation of CEFLI's anti-trust statement.

II. Approval of Minutes – July 15, 2020.

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the July 15, 2020 meeting are hereby approved.

III. Issues for Review.

The Committee

A. Coronavirus (COVID-19).

CEFLI's COVID-19 Networking Forum continues to meet every two weeks to explore various compliance-related issues associated with the COVID-19 pandemic. CEFLI thanked members of the Forum for their willingness to serve as moderators during past meetings.

The next meeting of the COVID-19 Networking Forum is scheduled to take place on Thursday, August 13 at 3 PM EDT. Individuals may contact Nancy Perez (NancyPerez@cefli.org) if they, or a colleague, are interested in participating in the COVID-19 Networking Forum.

The Committee was asked to discuss any operational compliance challenges and their "return to work" strategies. While Committee members did not offer discussion topics related to operational compliance challenges, a few members shared insight regarding their anticipated approaches for returning to the office.

One member noted a plan for staff to begin returning to the office on January 2nd (2% of staff are currently in the office). Another member indicated their company's Phase I return-to-work effort was voluntary, consisting of less than 10% of staff and that the company is continuing to develop its protocol for a post-Labor Day Phase II effort (which may involve up to 50% of staff).

Other Committee members noted plans for staff to begin returning to the office in the Fall (following the start of the school year), after the first of the year, or during second quarter. In most cases, Committee members indicated that initial return to work plans would be voluntary for staff and that a phased-in approach would be utilized.

B. Appropriate Sales Practices and Licensing Requirements in a Virtual Environment.

The COVID-19 pandemic has introduced a unique business environment in which producers may interact with consumers via virtual media.

Given the challenges associated with a new business environment for life insurance and annuity sales, industry observers (including life insurance companies as well as regulators) have been monitoring sales activity to determine whether sales are being conducted in an appropriate manner.

For example, some industry observers were anticipating an increase in replacement activity which reportedly has not taken place. Further, concerns were presented with respect to whether producers were obtaining the appropriate licensing requirements to be able to transact business lawfully in various states.

Committee members were asked to discuss whether they had observed any trends with respect to inappropriate sales activities (e.g., increased replacement activity) or instances of non-compliance with licensing requirements in light of conducting business virtually in a COVID-19 pandemic environment.

A few Committee members shared their experiences and efforts to manage producer activity in this area. Such efforts involved reminding producers of the need to understand where a client or prospect is physically located to ensure producer licensing and appointment requirements are satisfied before solicitation. Other efforts included reminding producers of the need to ensure prompt delivery (in person or by mail) of contracts to policyowners.

C. FINRA Rule 4530(d) - Reporting of Written Customer Complaints.

FINRA Rule 4530(d) requires firms to report quarterly statistical and summary information regarding written customer complaints. FINRA uses the information to identify and initiate investigations of firms, offices and associated persons that may pose a risk as part of FINRA's risk-based approach to regulation. The complaints are part of a firm's Risk Monitoring Report Cards.

Committee members were asked to discuss their practices with respect to filing FINRA Rule 4530(d) reports with respect to written customer complaints. Specifically:

- *Do broker-dealers that are principal underwriters for variable contracts issued by affiliated insurance companies file Rule 4530(d) reports with FINRA?*

- *If so, are servicing complaints related to variable contracts (such as allegations that a financial transaction was incorrectly processed) included as part of a firm's Rule 4530(d) reports?*

One Committee member noted a practice of distinguishing whether a complaint pertains to the broker-dealer or whether a complaint pertains to the insurance company's operations, with the latter potentially falling outside of Rule 4530(d) reporting requirements. Such complaint activity is reported on an as-needed basis. It was also noted that reportable activity can also arise in the context of litigation matters.

D. Oregon ORS 646A.620 - Social Security Numbers.

The Committee previously explored the enactment of legislation in the State of Oregon designed to protect identity theft by prohibiting, among other matters, the printing of a consumer's Social Security number on any materials not requested by the consumer or as part of any documentation of a transaction or service requested by the consumer, unless the consumer's Social Security number was redacted. Since that time, insurers have taken steps to comply with the law and the ACLI reportedly entered into discussions with the Oregon Division of Financial Regulation to clarify the application and scope of the law's requirements.

Committee members were asked to discuss the compliance strategies their companies have implemented to comply with this unique Oregon law, including:

- *Are life insurers mailing the full policy (including the application) to all customers?*
- *If so, is the customer's so security number being redacted from the application?*
- *Are Social Security numbers being printed on other documents that are mailed such as explanation of benefits documents?*
- *Are companies asking consumers to complete and mail any forms that would contain a Social Security number?*

Several Committee members indicated they do not redact SSNs on applications included with new policy delivery packets. It was noted that that the SSN is a key part of the file. One Committee member indicated they do not redact SSNs on newly issued contracts, but that they do redact SSNs when responding to duplicate contract requests.

E. Idaho H526 – New Idaho Code Section 41-1942 - Advertisement of Interest-Indexed Annuities – Idaho Bulletin 20-11.

During recent discussions of the NAIC Annuity Suitability (A) Working Group, Idaho Director Dean Cameron referenced recent legislation signed into law in the

State of Idaho that, among other provisions, prohibits life insurers issuing interest-indexed annuity contracts to advertise such contracts without prior approval of the advertisement from the Director.

Director Cameron indicated that this legislation has drawn considerable concern among life insurance companies issuing interest-indexed annuity contracts.

Subsequently, the Idaho Department of Insurance (DOI) issued Bulletin 20-11 which indicates that “any material marked “Producer Only” that will not be shown or relied upon by consumers in the sale of annuities is not required to be submitted for prior approval, unless requested.”

The Committee was asked to discuss compliance strategies associated with Idaho H526 as well as Idaho Bulletin 20-11 as it relates to the advertising and sale of interest-indexed annuity products in the State of Idaho.

One Committee member shared that the Idaho DOI indicated the company could continue to use existing materials until new materials were filed. While the company has since filed updated materials, it has not received a response from the regulator regarding the filing.

Another Committee member indicated their company had filed producer advertising materials, illustrations, and client-facing disclosure forms with the DOI but has not received a response to the filing.

A member also commented on the challenges associated with complying, by October 1st, with new Iowa statute Chapter 19, Section 41-1941. The statute requires the development of a new annuity disclosure (a prescribed form). The new disclosure form must be filed with the DOI and the filing must include a statement of variability information.

IV. Reporting Items.

CEFLI Staff.

A. NAIC Annuity Suitability (A) Working Group.

The NAIC Annuity Suitability (A) Working Group met recently to receive updates on state adoptions of the recently revised NAIC Suitability in Annuity Transactions Model Regulation. The Model Regulation has been adopted in Iowa and Arizona and the Working Group heard comments from Idaho, Kentucky, Ohio, and Rhode Island concerning their plans to adopt the Model Regulation in the coming months.

The Working Group also issued a set of Frequently Asked Questions concerning the recent revisions to the Model Regulation. The NAIC is seeking comments on the draft Frequently Asked Questions within the next 30 days.

B. NAIC Adopts Artificial Intelligence Principles.

During a recent meeting of the NAIC's Innovation and Technology Task Force, the NAIC adopted Principles regarding insurer use of Artificial Intelligence (AI).

The Principles include guidance with respect to the fair and ethical use of AI, accountability for all AI users, compliance with all applicable insurance laws and regulations, transparency for improving public confidence in AI and steps to ensure that AI systems should be robust secure and safe when implemented by insurers.

C. NAIC Forms Special Committee on Race & Insurance.

The NAIC announced that it will form a Special Committee on Race & Insurance. The Special Committee will be co-chaired by NAIC leadership.

The Special Committee will conduct research and analyze the level of diversity and inclusion within the insurance sector; engage with a broad group of stakeholders and issues related to race, diversity and inclusion in the insurance sector; determine whether current practices exist in the insurance sector that potentially disadvantage minorities; and make recommendations to the NAIC's Executive Committee by year-end.

D. SEC Announces Event and Emerging Risk Examination Team.

The SEC recently announced the creation of the Event and Emerging Risk Examination Team (EERT) in the Office of Compliance Inspections and Examinations (OCIE). The EERT will help ensure, through examinations and other firm engagement and monitoring activities, that firms are better prepared to address exigency threats, incidents, and emerging risks such as exchange adages, liquidity events and cybersecurity or operational resiliency concerns.

E. SEC Standards of Conduct Implementation Committee Issues Concerns Regarding Form CRS.

The SEC maintains a Standards of Conduct Implementation Committee (the "Committee") that reviews compliance with SEC requirements.

The Committee recently issued an announcement suggesting that it is reviewing the Form CRS relationship summary's from across section of firms to assess their compliance with the content and format requirements of Form CRS.

The Committee's initial reviews identified examples that "may lack certain disclosures or could be clearer or otherwise improved." The announcement indicated that the Committee would engage with firms to share best practices and provide feedback on the filings.

This is part of an overall effort by the SEC and FINRA to confirm compliance with not only Regulation Best Interest but also Form CRS.

CEFLI plans to conduct a session at its Annual Conference to have regulators from the SEC and FINRA discuss these developments.

F. DOL Declines to Extend 30 Day Comment Deadline on new DOL Fiduciary Rule Proposal.

Despite requests from Congress and advocacy groups, the DOL declined to extend its 30-day comment period on the new DOL Fiduciary Rule Proposal.

The DOL indicated that it is justified in relying solely upon written comments submitted within the 30-day comment deadline rather than holding a hearing because the proposal centers on the narrow policy of a prohibited transaction class exemption.

Industry observers have suggested that the pending election may provide a rationale as to why the DOL has declined to extend the 30-day comment deadline.

One Committee member indicated the 105 comment letters received, have now been posted to the DOL's website.

G. Hester Pierce and Caroline Crenshaw - Confirmed as Members of the Securities and Exchange Commission.

Hester Pierce and Caroline Crenshaw were confirmed by the Senate to serve on the Securities and Exchange Commission earlier this month.

Hester Pierce, a Republican, was reappointed to the SEC for a term ending in 2025. Crenshaw, a Democrat, will serve a term that expires in June 2024. Ms. Crenshaw has been on the SEC staff for the past seven years working in the Office of Compliance Inspections and Examinations and in the Division of Investment Management.

These appointments allow the SEC to be at full strength with five members. The current Commission is comprised of Chairman Jay Clayton (independent), Elad Roisman (Republican) and Allison Herron Lees (Democrat).

V. CEFLI Activities.

- A. Joint Webinar - SEC Regulation Best Interest - The Past, The Present and The Future - CEFLI/Deloitte – Thursday, July 16.

CEFLI conducted a Joint Webinar with CEFLI Affiliate Member organization Deloitte on the SEC Regulation Best Interest - The Past, The Present and The Future on Thursday, July 16.

CEFLI staff provided a brief report covering the highlights of the webinar.

During the webinar, George Hanley (Managing Director for Deloitte, a CEFLI Affiliate Member), Philip Pescatore (VP, Chief Compliance Officer for The Guardian Life Ins. Co. of America), and Jim Puhala (VP, Head of Field & Regulatory Compliance for MassMutual) shared their perspectives regarding the implementation challenges associated with SEC Regulation Best Interest.

The panel also discussed current focus areas—including the need for firms to prepare for future examinations. The panel concluded by sharing thoughts about the future, recognizing the ever-changing and crowded regulatory landscape (i.e., SEC, state regulators, DOL, etc.) focused on best interest standards.

During the webinar, audience feedback was gathered regarding past, current, and future challenges via live polling. The presentation materials and a recording of the webinar can be found on [this page of CEFLI's website](#).

- B. Joint Webinar - Market Conduct - CEFLI/Wolters Kluwer - Wednesday, July 29 - 1 PM EDT/12 Noon CDT/11 AM MDT/10 AM PDT.

CEFLI also conducted a Joint Webinar with Affiliate Member organization, Wolters Kluwer Financial Services, to discuss Market Conduct on July 29.

CEFLI staff summarized the highlights of the webinar.

During the webinar, Kathy Donovan (Senior Compliance Counsel for Wolters Kluwer, a CEFLI Affiliate Member), shared insight regarding specific key market conduct challenges associated with complying with regulatory requirements associate with claims, replacements, unclaimed property, and sales and marketing. Ms. Donovan also offered perspectives regarding market conduct-related challenges and lessons learned.

Several polling questions were utilized to gauge audience perspectives related to company experience with market regulation requests, DOI enforcement activity, and the nature of recent enforcement actions.

The presentation materials and a recording of the webinar can be found [on this page of CEFLI's website](#).

- C. CEFLI COVID-19 Networking Forum –Thursday, August 13 – 3 PM EDT/2 PM CDT/1 PM MDT/12 Noon PDT.

The next meeting of CEFLI's Networking Forum to explore COVID-19 operational issues is Thursday, August 13 at 3 PM EDT/2 PM CDT/1 PM MDT/12 Noon PDT. Please contact Nancy Perez (NancyPerez@cefli.org) if you or your colleagues would like to be added to the new COVID-19 Networking Forum.

- D. Publication of CEFLI's 2020 Compliance & Ethics Benchmarking Survey.

CEFLI recently published its [2020 Compliance & Ethics Benchmarking Survey report](#) which is now available for access by all member company representatives via CEFLI's website.

The CEFLI Compliance & Ethics Benchmarking Survey is an excellent way to keep abreast of current industry compliance trends and information concerning the staffing and budgeting of life insurance company compliance departments.

We welcome your feedback and comments!

- E. Registration Open - 2020 CEFLI Annual Conference.

Registration is now open for CEFLI's 2020 Annual Conference. CEFLI will be conducting its 2020 Annual Conference on September 23-25 virtually via Zoom.

You may register for the 2020 CEFLI Annual Conference by accessing the CEFLI website, [clicking here](#) (or clicking on the graphic provided with the email for purposes of this meeting).

We hope you will be able to join us!

- F. Advertising Review Networking Forum.

CEFLI is considering developing an Advertising Review Networking Forum following indications of Member interest in the re-establishment of such a Forum.

If you may have an interest in joining a future Advertising Review Networking Forum for purposes of periodically discussing compliance challenges related to Advertising Review issues, please contact Nancy Perez at NancyPerez@cefli.org to indicate your interest.

VI. Next Meeting.

There has been a date change for the next Compliance & Ethics Committee meeting, as noted below.

The next meeting of the Committee is scheduled to take place:

Wednesday, September 16, 2020 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

The remaining Committee meeting dates for 2020 are as follows:

Wednesday, October 14, 2020 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Thursday, November 12, 2020 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Wednesday, December 16, 2020 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

VII. Other Business.

There being no additional business the meeting was adjourned.

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5165

66th Legislature
2020 Regular Session

Passed by the Senate January 17, 2020
Yeas 26 Nays 20

President of the Senate

Passed by the House March 3, 2020
Yeas 57 Nays 39

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5165** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5165

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senators Saldaña, Hasegawa, Wellman, Darneille, Keiser, Nguyen, and Wilson, C.

Read first time 01/15/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to discrimination based on citizenship or
2 immigration status; amending RCW 49.60.010, 49.60.020, 49.60.030,
3 49.60.120, 49.60.130, 49.60.175, 49.60.176, 49.60.178, 49.60.180,
4 49.60.190, 49.60.200, 49.60.215, 49.60.222, 49.60.223, 49.60.224, and
5 49.60.225; and adding a new section to chapter 49.60 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 49.60.010 and 2007 c 187 s 1 are each amended to
8 read as follows:

9 This chapter shall be known as the "law against discrimination."
10 It is an exercise of the police power of the state for the protection
11 of the public welfare, health, and peace of the people of this state,
12 and in fulfillment of the provisions of the Constitution of this
13 state concerning civil rights. The legislature hereby finds and
14 declares that practices of discrimination against any of its
15 inhabitants because of race, creed, color, national origin,
16 citizenship or immigration status, families with children, sex,
17 marital status, sexual orientation, age, honorably discharged veteran
18 or military status, or the presence of any sensory, mental, or
19 physical disability or the use of a trained dog guide or service
20 animal by a person with a disability are a matter of state concern,
21 that such discrimination threatens not only the rights and proper

1 privileges of its inhabitants but menaces the institutions and
2 foundation of a free democratic state. A state agency is herein
3 created with powers with respect to elimination and prevention of
4 discrimination in employment, in credit and insurance transactions,
5 in places of public resort, accommodation, or amusement, and in real
6 property transactions because of race, creed, color, national origin,
7 citizenship or immigration status, families with children, sex,
8 marital status, sexual orientation, age, honorably discharged veteran
9 or military status, or the presence of any sensory, mental, or
10 physical disability or the use of a trained dog guide or service
11 animal by a person with a disability; and the commission established
12 hereunder is hereby given general jurisdiction and power for such
13 purposes.

14 **Sec. 2.** RCW 49.60.020 and 2007 c 187 s 2 are each amended to
15 read as follows:

16 The provisions of this chapter shall be construed liberally for
17 the accomplishment of the purposes thereof. Nothing contained in this
18 chapter shall be deemed to repeal any of the provisions of any other
19 law of this state relating to discrimination because of race, color,
20 creed, national origin, citizenship or immigration status, sex,
21 marital status, sexual orientation, age, honorably discharged veteran
22 or military status, or the presence of any sensory, mental, or
23 physical disability, other than a law which purports to require or
24 permit doing any act which is an unfair practice under this chapter.
25 However, to the extent that distinction or differential treatment on
26 the basis of citizenship or immigration status is authorized by
27 federal or state law, regulation, or government contract, it is not
28 an unfair practice. Nor shall anything herein contained be construed
29 to deny the right to any person to institute any action or pursue any
30 civil or criminal remedy based upon an alleged violation of his or
31 her civil rights. This chapter shall not be construed to endorse any
32 specific belief, practice, behavior, or orientation. Inclusion of
33 sexual orientation in this chapter shall not be construed to modify
34 or supersede state law relating to marriage.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.60
36 RCW to read as follows:

37 It is not an unfair practice when a distinction or differential
38 treatment on the basis of citizenship or immigration status is

1 authorized by federal or state law, regulation, rule, or government
2 contract.

3 **Sec. 4.** RCW 49.60.030 and 2009 c 164 s 1 are each amended to
4 read as follows:

5 (1) The right to be free from discrimination because of race,
6 creed, color, national origin, citizenship or immigration status,
7 sex, honorably discharged veteran or military status, sexual
8 orientation, or the presence of any sensory, mental, or physical
9 disability or the use of a trained dog guide or service animal by a
10 person with a disability is recognized as and declared to be a civil
11 right. This right shall include, but not be limited to:

12 (a) The right to obtain and hold employment without
13 discrimination;

14 (b) The right to the full enjoyment of any of the accommodations,
15 advantages, facilities, or privileges of any place of public resort,
16 accommodation, assemblage, or amusement;

17 (c) The right to engage in real estate transactions without
18 discrimination, including discrimination against families with
19 children;

20 (d) The right to engage in credit transactions without
21 discrimination;

22 (e) The right to engage in insurance transactions or transactions
23 with health maintenance organizations without discrimination:
24 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,
25 48.44.220, or 48.46.370 does not constitute an unfair practice for
26 the purposes of this subparagraph;

27 (f) The right to engage in commerce free from any discriminatory
28 boycotts or blacklists. Discriminatory boycotts or blacklists for
29 purposes of this section shall be defined as the formation or
30 execution of any express or implied agreement, understanding, policy
31 or contractual arrangement for economic benefit between any persons
32 which is not specifically authorized by the laws of the United States
33 and which is required or imposed, either directly or indirectly,
34 overtly or covertly, by a foreign government or foreign person in
35 order to restrict, condition, prohibit, or interfere with or in order
36 to exclude any person or persons from any business relationship on
37 the basis of race, color, creed, religion, sex, honorably discharged
38 veteran or military status, sexual orientation, the presence of any
39 sensory, mental, or physical disability, or the use of a trained dog

1 guide or service animal by a person with a disability, or national
2 origin, citizenship or immigration status, or lawful business
3 relationship: PROVIDED HOWEVER, That nothing herein contained shall
4 prohibit the use of boycotts as authorized by law pertaining to labor
5 disputes and unfair labor practices; and

6 (g) The right of a mother to breastfeed her child in any place of
7 public resort, accommodation, assemblage, or amusement.

8 (2) Any person deeming himself or herself injured by any act in
9 violation of this chapter shall have a civil action in a court of
10 competent jurisdiction to enjoin further violations, or to recover
11 the actual damages sustained by the person, or both, together with
12 the cost of suit including reasonable attorneys' fees or any other
13 appropriate remedy authorized by this chapter or the United States
14 Civil Rights Act of 1964 as amended, or the Federal Fair Housing
15 Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

16 (3) Except for any unfair practice committed by an employer
17 against an employee or a prospective employee, or any unfair practice
18 in a real estate transaction which is the basis for relief specified
19 in the amendments to RCW 49.60.225 contained in chapter 69, Laws of
20 1993, any unfair practice prohibited by this chapter which is
21 committed in the course of trade or commerce as defined in the
22 Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of
23 applying that chapter, a matter affecting the public interest, is not
24 reasonable in relation to the development and preservation of
25 business, and is an unfair or deceptive act in trade or commerce.

26 **Sec. 5.** RCW 49.60.120 and 2007 c 187 s 5 are each amended to
27 read as follows:

28 The commission shall have the functions, powers, and duties:

29 (1) To appoint an executive director and chief examiner, and such
30 investigators, examiners, clerks, and other employees and agents as
31 it may deem necessary, fix their compensation within the limitations
32 provided by law, and prescribe their duties.

33 (2) To obtain upon request and utilize the services of all
34 governmental departments and agencies.

35 (3) To adopt, amend, and rescind suitable rules to carry out the
36 provisions of this chapter, and the policies and practices of the
37 commission in connection therewith.

38 (4) To receive, impartially investigate, and pass upon complaints
39 alleging unfair practices as defined in this chapter.

1 (5) To issue such publications and results of investigations and
2 research as in its judgment will tend to promote good will and
3 minimize or eliminate discrimination because of sex, sexual
4 orientation, race, creed, color, national origin, citizenship or
5 immigration status, marital status, age, honorably discharged veteran
6 or military status, or the presence of any sensory, mental, or
7 physical disability, or the use of a trained dog guide or service
8 animal by a person with a disability.

9 (6) To make such technical studies as are appropriate to
10 effectuate the purposes and policies of this chapter and to publish
11 and distribute the reports of such studies.

12 (7) To cooperate and act jointly or by division of labor with the
13 United States or other states, with other Washington state agencies,
14 commissions, and other government entities, and with political
15 subdivisions of the state of Washington and their respective human
16 rights agencies to carry out the purposes of this chapter. However,
17 the powers which may be exercised by the commission under this
18 subsection permit investigations and complaint dispositions only if
19 the investigations are designed to reveal, or the complaint deals
20 only with, allegations which, if proven, would constitute unfair
21 practices under this chapter. The commission may perform such
22 services for these agencies and be reimbursed therefor.

23 (8) To foster good relations between minority and majority
24 population groups of the state through seminars, conferences,
25 educational programs, and other intergroup relations activities.

26 **Sec. 6.** RCW 49.60.130 and 2007 c 187 s 6 are each amended to
27 read as follows:

28 The commission has power to create such advisory agencies and
29 conciliation councils, local, regional, or statewide, as in its
30 judgment will aid in effectuating the purposes of this chapter. The
31 commission may empower them to study the problems of discrimination
32 in all or specific fields of human relationships or in specific
33 instances of discrimination because of sex, race, creed, color,
34 national origin, citizenship or immigration status, marital status,
35 sexual orientation, age, honorably discharged veteran or military
36 status, or the presence of any sensory, mental, or physical
37 disability or the use of a trained dog guide or service animal by a
38 person with a disability; to foster through community effort or
39 otherwise good will, cooperation, and conciliation among the groups

1 and elements of the population of the state, and to make
2 recommendations to the commission for the development of policies and
3 procedures in general and in specific instances, and for programs of
4 formal and informal education which the commission may recommend to
5 the appropriate state agency.

6 Such advisory agencies and conciliation councils shall be
7 composed of representative citizens, serving without pay, but with
8 reimbursement for travel expenses in accordance with RCW 43.03.050
9 and 43.03.060 as now existing or hereafter amended, and the
10 commission may make provision for technical and clerical assistance
11 to such agencies and councils and for the expenses of such
12 assistance. The commission may use organizations specifically
13 experienced in dealing with questions of discrimination.

14 **Sec. 7.** RCW 49.60.175 and 2007 c 187 s 7 are each amended to
15 read as follows:

16 It shall be an unfair practice to use the sex, race, creed,
17 color, national origin, citizenship or immigration status, marital
18 status, honorably discharged veteran or military status, sexual
19 orientation, or the presence of any sensory, mental, or physical
20 disability of any person, or the use of a trained dog guide or
21 service animal by a person with a disability, concerning an
22 application for credit in any credit transaction to determine the
23 creditworthiness of an applicant.

24 **Sec. 8.** RCW 49.60.176 and 2007 c 187 s 8 are each amended to
25 read as follows:

26 (1) It is an unfair practice for any person whether acting for
27 himself, herself, or another in connection with any credit
28 transaction because of race, creed, color, national origin,
29 citizenship or immigration status, sex, marital status, honorably
30 discharged veteran or military status, sexual orientation, or the
31 presence of any sensory, mental, or physical disability or the use of
32 a trained dog guide or service animal by a person with a disability:

- 33 (a) To deny credit to any person;
- 34 (b) To increase the charges or fees for or collateral required to
35 secure any credit extended to any person;
- 36 (c) To restrict the amount or use of credit extended or to impose
37 different terms or conditions with respect to the credit extended to
38 any person or any item or service related thereto;

1 (d) To attempt to do any of the unfair practices defined in this
2 section.

3 (2) Nothing in this section shall prohibit any party to a credit
4 transaction from considering the credit history of any individual
5 applicant.

6 (3) Further, nothing in this section shall prohibit any party to
7 a credit transaction from considering the application of the
8 community property law to the individual case or from taking
9 reasonable action thereon.

10 **Sec. 9.** RCW 49.60.178 and 2006 c 4 s 9 are each amended to read
11 as follows:

12 It is an unfair practice for any person whether acting for
13 himself, herself, or another in connection with an insurance
14 transaction or transaction with a health maintenance organization to
15 cancel or fail or refuse to issue or renew insurance or a health
16 maintenance agreement to any person because of sex, marital status,
17 sexual orientation, race, creed, color, national origin, citizenship
18 or immigration status, or the presence of any sensory, mental, or
19 physical disability or the use of a trained dog guide or service
20 animal by a (~~disabled~~) person with disabilities: PROVIDED, That a
21 practice which is not unlawful under RCW 48.30.300, 48.44.220, or
22 48.46.370 does not constitute an unfair practice for the purposes of
23 this section. For the purposes of this section, "insurance
24 transaction" is defined in RCW 48.01.060, health maintenance
25 agreement is defined in RCW 48.46.020, and "health maintenance
26 organization" is defined in RCW 48.46.020.

27 The fact that such unfair practice may also be a violation of
28 chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to
29 an action brought under this section.

30 The insurance commissioner, under RCW 48.30.300, and the human
31 rights commission, under chapter 49.60 RCW, shall have concurrent
32 jurisdiction under this section and shall enter into a working
33 agreement as to procedure to be followed in complaints under this
34 section.

35 **Sec. 10.** RCW 49.60.180 and 2007 c 187 s 9 are each amended to
36 read as follows:

37 It is an unfair practice for any employer:

1 (1) To refuse to hire any person because of age, sex, marital
2 status, sexual orientation, race, creed, color, national origin,
3 citizenship or immigration status, honorably discharged veteran or
4 military status, or the presence of any sensory, mental, or physical
5 disability or the use of a trained dog guide or service animal by a
6 person with a disability, unless based upon a bona fide occupational
7 qualification: PROVIDED, That the prohibition against discrimination
8 because of such disability shall not apply if the particular
9 disability prevents the proper performance of the particular worker
10 involved: PROVIDED, That this section shall not be construed to
11 require an employer to establish employment goals or quotas based on
12 sexual orientation.

13 (2) To discharge or bar any person from employment because of
14 age, sex, marital status, sexual orientation, race, creed, color,
15 national origin, citizenship or immigration status, honorably
16 discharged veteran or military status, or the presence of any
17 sensory, mental, or physical disability or the use of a trained dog
18 guide or service animal by a person with a disability.

19 (3) To discriminate against any person in compensation or in
20 other terms or conditions of employment because of age, sex, marital
21 status, sexual orientation, race, creed, color, national origin,
22 citizenship or immigration status, honorably discharged veteran or
23 military status, or the presence of any sensory, mental, or physical
24 disability or the use of a trained dog guide or service animal by a
25 person with a disability: PROVIDED, That it shall not be an unfair
26 practice for an employer to segregate washrooms or locker facilities
27 on the basis of sex, or to base other terms and conditions of
28 employment on the sex of employees where the commission by regulation
29 or ruling in a particular instance has found the employment practice
30 to be appropriate for the practical realization of equality of
31 opportunity between the sexes.

32 (4) To print, or circulate, or cause to be printed or circulated
33 any statement, advertisement, or publication, or to use any form of
34 application for employment, or to make any inquiry in connection with
35 prospective employment, which expresses any limitation,
36 specification, or discrimination as to age, sex, marital status,
37 sexual orientation, race, creed, color, national origin, citizenship
38 or immigration status, honorably discharged veteran or military
39 status, or the presence of any sensory, mental, or physical
40 disability or the use of a trained dog guide or service animal by a

1 person with a disability, or any intent to make any such limitation,
2 specification, or discrimination, unless based upon a bona fide
3 occupational qualification: PROVIDED, Nothing contained herein shall
4 prohibit advertising in a foreign language.

5 **Sec. 11.** RCW 49.60.190 and 2007 c 187 s 10 are each amended to
6 read as follows:

7 It is an unfair practice for any labor union or labor
8 organization:

9 (1) To deny membership and full membership rights and privileges
10 to any person because of age, sex, marital status, sexual
11 orientation, race, creed, color, national origin, citizenship or
12 immigration status, honorably discharged veteran or military status,
13 or the presence of any sensory, mental, or physical disability or the
14 use of a trained dog guide or service animal by a person with a
15 disability.

16 (2) To expel from membership any person because of age, sex,
17 marital status, sexual orientation, race, creed, color, national
18 origin, citizenship or immigration status, honorably discharged
19 veteran or military status, or the presence of any sensory, mental,
20 or physical disability or the use of a trained dog guide or service
21 animal by a person with a disability.

22 (3) To discriminate against any member, employer, employee, or
23 other person to whom a duty of representation is owed because of age,
24 sex, marital status, sexual orientation, race, creed, color, national
25 origin, citizenship or immigration status, honorably discharged
26 veteran or military status, or the presence of any sensory, mental,
27 or physical disability or the use of a trained dog guide or service
28 animal by a person with a disability.

29 **Sec. 12.** RCW 49.60.200 and 2007 c 187 s 11 are each amended to
30 read as follows:

31 It is an unfair practice for any employment agency to fail or
32 refuse to classify properly or refer for employment, or otherwise to
33 discriminate against, an individual because of age, sex, marital
34 status, sexual orientation, race, creed, color, national origin,
35 citizenship or immigration status, honorably discharged veteran or
36 military status, or the presence of any sensory, mental, or physical
37 disability or the use of a trained dog guide or service animal by a
38 person with a disability, or to print or circulate, or cause to be

1 printed or circulated any statement, advertisement, or publication,
2 or to use any form of application for employment, or to make any
3 inquiry in connection with prospective employment, which expresses
4 any limitation, specification or discrimination as to age, sex, race,
5 sexual orientation, creed, color, or national origin, citizenship or
6 immigration status, honorably discharged veteran or military status,
7 or the presence of any sensory, mental, or physical disability or the
8 use of a trained dog guide or service animal by a person with a
9 disability, or any intent to make any such limitation, specification,
10 or discrimination, unless based upon a bona fide occupational
11 qualification: PROVIDED, Nothing contained herein shall prohibit
12 advertising in a foreign language.

13 **Sec. 13.** RCW 49.60.215 and 2018 c 176 s 3 are each amended to
14 read as follows:

15 It shall be an unfair practice for any person or the person's
16 agent or employee to commit an act which directly or indirectly
17 results in any distinction, restriction, or discrimination, or the
18 requiring of any person to pay a larger sum than the uniform rates
19 charged other persons, or the refusing or withholding from any person
20 the admission, patronage, custom, presence, frequenting, dwelling,
21 staying, or lodging in any place of public resort, accommodation,
22 assemblage, or amusement, except for conditions and limitations
23 established by law and applicable to all persons, regardless of race,
24 creed, color, national origin, citizenship or immigration status,
25 sexual orientation, sex, honorably discharged veteran or military
26 status, status as a mother breastfeeding her child, the presence of
27 any sensory, mental, or physical disability, or the use of a trained
28 dog guide or service animal by a person with a disability: PROVIDED,
29 That this section shall not be construed to require structural
30 changes, modifications, or additions to make any place accessible to
31 a person with a disability except as otherwise required by law:
32 PROVIDED, That behavior or actions constituting a risk to property or
33 other persons can be grounds for refusal and shall not constitute an
34 unfair practice.

35 **Sec. 14.** RCW 49.60.222 and 2007 c 187 s 13 are each amended to
36 read as follows:

37 (1) It is an unfair practice for any person, whether acting for
38 himself, herself, or another, because of sex, marital status, sexual

1 orientation, race, creed, color, national origin, citizenship or
2 immigration status, families with children status, honorably
3 discharged veteran or military status, the presence of any sensory,
4 mental, or physical disability, or the use of a trained dog guide or
5 service animal by a person with a disability:

6 (a) To refuse to engage in a real estate transaction with a
7 person;

8 (b) To discriminate against a person in the terms, conditions, or
9 privileges of a real estate transaction or in the furnishing of
10 facilities or services in connection therewith;

11 (c) To refuse to receive or to fail to transmit a bona fide offer
12 to engage in a real estate transaction from a person;

13 (d) To refuse to negotiate for a real estate transaction with a
14 person;

15 (e) To represent to a person that real property is not available
16 for inspection, sale, rental, or lease when in fact it is so
17 available, or to fail to bring a property listing to his or her
18 attention, or to refuse to permit the person to inspect real
19 property;

20 (f) To discriminate in the sale or rental, or to otherwise make
21 unavailable or deny a dwelling, to any person; or to a person
22 residing in or intending to reside in that dwelling after it is sold,
23 rented, or made available; or to any person associated with the
24 person buying or renting;

25 (g) To make, print, circulate, post, or mail, or cause to be so
26 made or published a statement, advertisement, or sign, or to use a
27 form of application for a real estate transaction, or to make a
28 record or inquiry in connection with a prospective real estate
29 transaction, which indicates, directly or indirectly, an intent to
30 make a limitation, specification, or discrimination with respect
31 thereto;

32 (h) To offer, solicit, accept, use, or retain a listing of real
33 property with the understanding that a person may be discriminated
34 against in a real estate transaction or in the furnishing of
35 facilities or services in connection therewith;

36 (i) To expel a person from occupancy of real property;

37 (j) To discriminate in the course of negotiating, executing, or
38 financing a real estate transaction whether by mortgage, deed of
39 trust, contract, or other instrument imposing a lien or other
40 security in real property, or in negotiating or executing any item or

1 service related thereto including issuance of title insurance,
2 mortgage insurance, loan guarantee, or other aspect of the
3 transaction. Nothing in this section shall limit the effect of RCW
4 49.60.176 relating to unfair practices in credit transactions; or

5 (k) To attempt to do any of the unfair practices defined in this
6 section.

7 (2) For the purposes of this chapter discrimination based on the
8 presence of any sensory, mental, or physical disability or the use of
9 a trained dog guide or service animal by a person who is blind, deaf,
10 or physically disabled includes:

11 (a) A refusal to permit, at the expense of the person with a
12 disability, reasonable modifications of existing premises occupied or
13 to be occupied by such person if such modifications may be necessary
14 to afford such person full enjoyment of the dwelling, except that, in
15 the case of a rental, the landlord may, where it is reasonable to do
16 so, condition permission for a modification on the renter agreeing to
17 restore the interior of the dwelling to the condition that existed
18 before the modification, reasonable wear and tear excepted;

19 (b) To refuse to make reasonable accommodation in rules,
20 policies, practices, or services when such accommodations may be
21 necessary to afford a person with the presence of any sensory,
22 mental, or physical disability and/or the use of a trained dog guide
23 or service animal by a person who is blind, deaf, or physically
24 disabled equal opportunity to use and enjoy a dwelling; or

25 (c) To fail to design and construct covered multifamily dwellings
26 and premises in conformance with the federal fair housing amendments
27 act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable
28 laws or regulations pertaining to access by persons with any sensory,
29 mental, or physical disability or use of a trained dog guide or
30 service animal. Whenever the requirements of applicable laws or
31 regulations differ, the requirements which require greater
32 accessibility for persons with any sensory, mental, or physical
33 disability shall govern.

34 Nothing in (a) or (b) of this subsection shall apply to: (i) A
35 single-family house rented or leased by the owner if the owner does
36 not own or have an interest in the proceeds of the rental or lease of
37 more than three such single-family houses at one time, the rental or
38 lease occurred without the use of a (~~real-estate~~) salesperson, or a
39 broker (~~(or salesperson,)~~) as defined in RCW (~~(18.85.010)~~) 18.85.011,
40 and the rental or lease occurred without the publication, posting, or

1 mailing of any advertisement, sign, or statement in violation of
2 subsection (1)(g) of this section; or (ii) rooms or units in
3 dwellings containing living quarters occupied or intended to be
4 occupied by no more than four families living independently of each
5 other if the owner maintains and occupies one of the rooms or units
6 as his or her residence.

7 (3) Notwithstanding any other provision of this chapter, it shall
8 not be an unfair practice or a denial of civil rights for any public
9 or private educational institution to separate the sexes or give
10 preference to or limit use of dormitories, residence halls, or other
11 student housing to persons of one sex or to make distinctions on the
12 basis of marital or families with children status.

13 (4) Except pursuant to subsection (2)(a) of this section, this
14 section shall not be construed to require structural changes,
15 modifications, or additions to make facilities accessible to a person
16 with a disability except as otherwise required by law. Nothing in
17 this section affects the rights, responsibilities, and remedies of
18 landlords and tenants pursuant to chapter 59.18 or 59.20 RCW,
19 including the right to post and enforce reasonable rules of conduct
20 and safety for all tenants and their guests, provided that chapters
21 59.18 and 59.20 RCW are only affected to the extent they are
22 inconsistent with the nondiscrimination requirements of this chapter.
23 Nothing in this section limits the applicability of any reasonable
24 federal, state, or local restrictions regarding the maximum number of
25 occupants permitted to occupy a dwelling.

26 (5) Notwithstanding any other provision of this chapter, it shall
27 not be an unfair practice for any public establishment providing for
28 accommodations offered for the full enjoyment of transient guests as
29 defined by RCW 9.91.010(1)(c) to make distinctions on the basis of
30 families with children status. Nothing in this section shall limit
31 the effect of RCW 49.60.215 relating to unfair practices in places of
32 public accommodation.

33 (6) Nothing in this chapter prohibiting discrimination based on
34 families with children status applies to housing for older persons as
35 defined by the federal fair housing amendments act of 1988, 42 U.S.C.
36 Sec. 3607(b)(1) through (3), as amended by the housing for older
37 persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.
38 Nothing in this chapter authorizes requirements for housing for older
39 persons different than the requirements in the federal fair housing
40 amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as

1 amended by the housing for older persons act of 1995, P.L. 104-76, as
2 enacted on December 28, 1995.

3 (7) Nothing in this chapter shall apply to real estate
4 transactions involving the sharing of a dwelling unit, or rental or
5 sublease of a portion of a dwelling unit, when the dwelling unit is
6 to be occupied by the owner or sublessor. For purposes of this
7 section, "dwelling unit" has the same meaning as in RCW 59.18.030.

8 **Sec. 15.** RCW 49.60.223 and 2007 c 187 s 14 are each amended to
9 read as follows:

10 It is an unfair practice for any person, for profit, to induce or
11 attempt to induce any person to sell or rent any real property by
12 representations regarding the entry or prospective entry into the
13 neighborhood of a person or persons of a particular race, creed,
14 color, sex, national origin, citizenship or immigration status,
15 sexual orientation, families with children status, honorably
16 discharged veteran or military status, or with any sensory, mental,
17 or physical disability and/or the use of a trained dog guide or
18 service animal by a person who is blind, deaf, or physically
19 disabled.

20 **Sec. 16.** RCW 49.60.224 and 2007 c 187 s 15 are each amended to
21 read as follows:

22 (1) Every provision in a written instrument relating to real
23 property which purports to forbid or restrict the conveyance,
24 encumbrance, occupancy, or lease thereof to individuals of a
25 specified race, creed, color, sex, national origin, citizenship or
26 immigration status, sexual orientation, families with children
27 status, honorably discharged veteran or military status, or with any
28 sensory, mental, or physical disability or the use of a trained dog
29 guide or service animal by a person who is blind, deaf, or physically
30 disabled, and every condition, restriction, or prohibition, including
31 a right of entry or possibility of reverter, which directly or
32 indirectly limits the use or occupancy of real property on the basis
33 of race, creed, color, sex, national origin, citizenship or
34 immigration status, sexual orientation, families with children
35 status, honorably discharged veteran or military status, or the
36 presence of any sensory, mental, or physical disability or the use of
37 a trained dog guide or service animal by a person who is blind, deaf,
38 or physically disabled is void.

1 (2) It is an unfair practice to insert in a written instrument
2 relating to real property a provision that is void under this section
3 or to honor or attempt to honor such a provision in the chain of
4 title.

5 **Sec. 17.** RCW 49.60.225 and 2007 c 187 s 16 are each amended to
6 read as follows:

7 (1) When a reasonable cause determination has been made under RCW
8 49.60.240 that an unfair practice in a real estate transaction has
9 been committed and a finding has been made that the respondent has
10 engaged in any unfair practice under RCW 49.60.250, the
11 administrative law judge shall promptly issue an order for such
12 relief suffered by the aggrieved person as may be appropriate, which
13 may include actual damages as provided by the federal fair housing
14 amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive
15 or other equitable relief. Such order may, to further the public
16 interest, assess a civil penalty against the respondent:

17 (a) In an amount up to ten thousand dollars if the respondent has
18 not been determined to have committed any prior unfair practice in a
19 real estate transaction;

20 (b) In an amount up to twenty-five thousand dollars if the
21 respondent has been determined to have committed one other unfair
22 practice in a real estate transaction during the five-year period
23 ending on the date of the filing of this charge; or

24 (c) In an amount up to fifty thousand dollars if the respondent
25 has been determined to have committed two or more unfair practices in
26 a real estate transaction during the seven-year period ending on the
27 date of the filing of this charge, for loss of the right secured by
28 RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224,
29 as now or hereafter amended, to be free from discrimination in real
30 property transactions because of sex, marital status, race, creed,
31 color, national origin, citizenship or immigration status, sexual
32 orientation, families with children status, honorably discharged
33 veteran or military status, or the presence of any sensory, mental,
34 or physical disability or the use of a trained dog guide or service
35 animal by a person who is blind, deaf, or physically disabled.
36 Enforcement of the order and appeal therefrom by the complainant or
37 respondent may be made as provided in RCW 49.60.260 and 49.60.270. If
38 acts constituting the unfair practice in a real estate transaction
39 that is the object of the charge are determined to have been

1 committed by the same natural person who has been previously
2 determined to have committed acts constituting an unfair practice in
3 a real estate transaction, then the civil penalty of up to fifty
4 thousand dollars may be imposed without regard to the period of time
5 within which any subsequent unfair practice in a real estate
6 transaction occurred. All civil penalties assessed under this section
7 shall be paid into the state treasury and credited to the general
8 fund.

9 (2) Such order shall not affect any contract, sale, conveyance,
10 encumbrance, or lease consummated before the issuance of an order
11 that involves a bona fide purchaser, encumbrancer, or tenant who does
12 not have actual notice of the charge filed under this chapter.

13 (3) Notwithstanding any other provision of this chapter, persons
14 awarded damages under this section may not receive additional damages
15 pursuant to RCW 49.60.250.

--- END ---

230-RICR-20-25-1

TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

CHAPTER 20 – INSURANCE

SUBCHAPTER 25 – LIFE AND ANNUITIES

PART 1 – Suitability in Annuity Transactions

1.1 Authority

This Part is promulgated in accordance with R.I. Gen. Laws § 27-29-12.

1.2 Purpose

- A. The purpose of this Part is to require producers, as defined in this Regulation, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations ~~and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products~~ so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately effectively addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this Part or to subject a producer to civil liability under the best interest standard of care outlined in § 1.6 of this Part or under standards governing the conduct of a fiduciary or a fiduciary relationship.

1.3 Scope

This Part shall apply to any sale or recommendation ~~to purchase, exchange or replace of~~ an annuity ~~made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.~~ If a recommendation is subject both to this Part and to R.I. Gen. Laws Chapter 7-11, the State of Rhode Island may investigate and, where appropriate, seek sanctions with regard to such recommendation under both R.I. Gen. Laws Chapter 7-11 and this Part. The laws are complementary and application of one does not prohibit enforcement of the other prior to, concurrent with or subsequent to any action taken by the appropriate enforcement authority.

1.4 Exemptions

- A. Unless otherwise specifically included, this Part shall not apply to transactions involving:
1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Part;
 2. Contracts used to fund:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act (ERISA), Pub. Law 93-406, as amended;
 - b. A plan described by the Internal Revenue Code (IRC), 26 U.S.C. §§ 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;
 - c. A government or church plan defined in § 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under § 457 of the IRC;
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - e3. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - f4. Formal prepaid funeral contracts.

1.5 Definitions

- A. “Annuity” means an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.
- B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- C. “Commissioner” means the definition in R.I. Gen. Laws § 42-14-5.

D. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:

1. Age;
2. Annual income;
3. Financial situation and needs, including debts and other obligations;
4. Financial experience;
5. Insurance needs;
6. Financial objectives;
7. Intended use of the annuity;
8. Financial time horizon;
9. Existing assets or financial products, including investment, annuity and insurance holdings;
10. Liquidity needs;
11. Liquid net worth;
12. Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
13. Financial resources used to fund the annuity; and
14. Tax status.

BE. “Continuing education credit” or “CE credit” means one (1) continuing education credit as defined in R.I. Gen. Laws § 27-3.2-1 *et seq.* and [Subchapter 50 Part 2](#) of this Chapter.

CE. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to R.I. Gen. Laws § 27-3.2-1 *et seq.* and [Subchapter 50 Part 2](#) of this Chapter.

DG. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.

EH. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

~~F.~~ ~~“Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.~~

I. “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.

J. “Material conflict of interest” means:

1. A financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.

2. “Material conflict of interest” does not include cash compensation or non-cash compensation.

K. “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

L. “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.

M. “Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this Regulation, “producer” includes an insurer where no producer is involved.

GN. “Recommendation” means:

1. Advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.

2. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

H.O. “Replacement” means a transaction in which a new ~~policy or contract~~ annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer ~~if there is no~~ whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy ~~or contract~~ has been or is to be any of the following:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or
5. Used in a financed purchase.

P. “SEC” means the United States Securities and Exchange Commission.

~~I.~~ ~~“Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

- ~~1. Age;~~
- ~~2. Annual income;~~
- ~~3. Financial situation and needs, including the financial resources used for the funding of the annuity;~~
- ~~4. Financial experience;~~
- ~~5. Financial objectives;~~
- ~~6. Intended use of the annuity;~~
- ~~7. Financial time horizon;~~
- ~~8. Existing assets, including investment and life insurance holdings;~~
- ~~9. Liquidity needs;~~
- ~~10. Liquid net worth;~~

~~11. Risk tolerance; and~~

~~12. Tax status.~~

1.6 Duties of Insurers and ~~of Insurance~~ Producers

A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation: ~~In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

1. Care Obligation

- a. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
 - (1) Know the consumer's financial situation, insurance needs and financial objectives;
 - (2) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - (3) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
 - (4) Communicate the basis or bases of the recommendation.
- b. The requirements under § 1.6(A)(1)(a) of this Part include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

- c. The requirements under § 1.6(A)(1)(a) of this Part require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.
- d. The requirements under § 1.6(A) of this Part do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this Regulation.
- e. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of § 1.6(A) of this Part may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.
- f. The requirements under § 1.6(A)(1)(a) of this Part include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.
- g. The requirements under § 1.6(A)(1)(a) of this Part apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.
- h. The requirements under § 1.6(A)(1)(a) of this Part do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.
- i. The requirements under § 1.6(A)(1)(a) of this Part do not mean the producer has ongoing monitoring obligations under the care obligation under § 1.6(A)(1) of this Part, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

- j. In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:
- (1) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;
 - (2) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and
 - (3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty (60) months.
- k. Nothing in this Regulation should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this Regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

2. Disclosure obligation

- a. Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A which has been included in a bulletin issued for that purpose and available on the Department's website:
- (1) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
 - (2) An affirmative statement on whether the producer is licensed and authorized to sell the following products:
 - (AA) Fixed annuities;
 - (BB) Fixed indexed annuities;
 - (CC) Variable annuities;

(DD) Life insurance;

(EE) Mutual funds;

(FF) Stocks and bonds; and

(GG) Certificates of deposit.

(3) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:

(AA) One (1) insurer;

(BB) Two (2) or more insurers; or

(CC) Two (2) or more insurers although primarily contracted with one (1) insurer.

(4) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and

(5) A notice of the consumer's right to request additional information regarding cash compensation described in § 1.6(A)(2)(b) of this Part.

b. Upon request of the consumer or the consumer's designated representative, the producer shall disclose:

(1) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages;

(2) Whether the cash compensation is a one (1) time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

4c. Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe ~~the~~

consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk. (the requirements of § 1.6(A)(2)(b) of this Part ~~this paragraph~~ are intended to supplement and not replace the disclosure requirements of Part 6 of this Subchapter;

- ~~2. The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization or death or living benefit~~
- ~~3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and~~
- ~~4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
 - ~~a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period or contestability period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements~~
 - ~~b. The consumer would benefit from product enhancements and improvements; and~~
 - ~~c. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months~~~~
3. Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.
4. Documentation obligation. A producer shall at the time of recommendation or sale:

- a. Make a written record of any recommendation and the basis for the recommendation subject to this Regulation.;
- b. Obtain a consumer signed statement on a form substantially similar to Appendix B which has been included in a bulletin issued for that purpose and available on the Department's website documenting:
 - (1) A customer's refusal to provide the consumer profile information, if any; and
 - (2) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and
- c. Obtain a consumer signed statement on a form substantially similar to Appendix C which has been included in a bulletin issued for that purpose and available on the Department's website acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

5. Application of the best interest obligation. Any requirement applicable to a producer under §1.6(A) of this Part shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

~~B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information:~~

~~C. Except as permitted under § 1.6(D) of this Part, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

B. Transactions not based on a recommendation

D1. Except as provided under § 1.6(EB)(2) of this Part, neither an insurance a producer, nor an insurer, shall have any no obligation to a consumer under § 1.6(A) of this Part related to any annuity transaction if:

- ~~1a.~~ No recommendation is made;
 - ~~2b.~~ A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
 - ~~3c.~~ A consumer refuses to provide relevant suitability-consumer profile information and the annuity transaction is not recommended, or;
 - ~~4d.~~ A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.
- ~~E2.~~ An insurer's issuance of an annuity subject to § 1.6(~~DB~~)(1) of this Part shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

C. Supervision system

- 1. Except as permitted under § 1.6(B) of this Part, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.

~~F.~~ ~~An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:~~

- ~~1.~~ ~~Make a record of any recommendation subject to § 1.6(A) of this Part;~~
- ~~2.~~ ~~Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and~~
- ~~3.~~ ~~Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.~~

G2. An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this Part, including, but not limited to, the following:

- 1a. The insurer shall establish and maintain reasonable procedures to inform its insurance producers of the requirements of this Part and

shall incorporate the requirements of this Part into relevant ~~insurance~~-producer training manuals;

- ~~2~~b. The insurer shall establish and maintain standards for ~~insurance~~-producer product training and shall maintain reasonable procedures to require its ~~insurance~~-producers to comply with the requirements of § 1.7 of this Part;
- ~~3~~c. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its ~~insurance~~-producers;
- ~~4~~d. The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure ~~that~~ there is a reasonable basis to determine that ~~a recommendation is suitable~~ the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- ~~5~~e. The insurer shall establish and maintain reasonable procedure to detect recommendations that are not ~~suitable in compliance with §§ 1.6(A), (B), (D) and (E) of this Part~~. This may include, but is not limited to, confirmation of the consumer's suitability-consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in § 1.6(C)(2)(e) of this Part in this subparagraph prevents an insurer from complying with § 1.6(C)(2)(e) of this Part this subparagraph by applying sampling procedures, or by confirming the suitability-consumer profile information or other required information under § 1.6 of this Part after issuance or delivery of the annuity; ~~and~~
- f. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under § 1.6 of this Part;

- g. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
- h. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of § 1.6(C)(2)(h) of this Part are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and
- 6j. The insurer shall annually provide a written report to senior management, including to 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 corrective action taken or recommended, if any.

3. Contracted Supervision System

- Ha. Nothing in §§ 1.6(C)(2) or (C)(3) ~~(G), (H) or (I)~~ of this Part restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under § 1.6 ~~(G)~~(C)(2) of this Part. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to § 1.8 of this Part regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with § 1.6 ~~(H)~~(C)(3)(b) of this Part below.
- hb. An insurer's supervision system under § 1.6(C) ~~(G2)~~ of this Part shall include supervision of contractual performance § 1.6(C)(3) of this Part under this paragraph. This includes, but is not limited to, the following:

 - (1) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (2)- Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

~~J4.~~ An insurer is not required to include in its system of supervision: ~~an~~
~~insurance~~

a. A producer's recommendations to consumers of products other than the annuities offered by the insurer, or

b. Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

~~KD.~~ Prohibited Practices. Neither a producer nor an insurer shall. An insurance-
~~producer shall not~~ dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of ~~suitability-~~
the consumer profile information;
2. Filing a complaint; or
3. Cooperating with the investigation of a complaint.

~~E.~~ Safe harbor

~~1.~~ Recommendations and sales of annuities made in compliance with comparable standards ~~FINRA requirements pertaining to suitability and supervision of annuity transactions~~ shall satisfy the requirements under this Part. § 1.6(E) of this Part ~~This paragraph~~ applies to FINRA broker-dealer ~~all recommendations and~~ sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in § 1.6(E) of this Part ~~this paragraph~~ shall limit the insurance commissioner's ability to investigate and enforce ~~(including investigate)~~ the provisions of this Part.

~~2.~~ Nothing in the § 1.6(E)(1) of this Part shall limit the insurer's obligation to comply with § 1.6(C)(1) of this Part, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

~~43.~~ For ~~the § 1.6(E)(1) of this Part preceding paragraph~~ to apply, an insurer shall:

a. Monitor the ~~FINRA member broker-dealer~~ relevant conduct of the financial professional seeking to rely on § 1.6(C)(1) of this Part or

the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws using information collected in the normal course of an insurer's business; and

- b. Provide to the entity responsible for supervising the financial professional ~~FINRA member broker-dealer~~ relevant conduct of the financial professional seeking to rely on § 1.6(C)(1) of this Part, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws information and reports that are reasonably appropriate to assist the ~~FINRA member broker-dealer~~ such entity to maintain its supervision system.

4. For purposes of § 1.6(E) of this Part, "financial professional" means a producer that is regulated and acting as:

- a. A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;
- b. An investment adviser registered under federal securities laws or an investment adviser representative associated with the federal registered investment adviser; or
- c. A plan fiduciary under § 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. Law 93-406, or fiduciary under § 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

5. For purposes of § 1.6(E) of this Part, "comparable standards" means:

- a. With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor Regulations thereto;
- b. With respect to investment advisers registered under federal securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, 15 U.S.C. § 80b as amended, or R.I. Gen. Laws Chapter 7-11 including but not limited to, the Form ADV and interpretations; and

- c. With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

1.7 ~~Insurance~~ Producer Training

- A. An ~~insurance~~ producer shall not solicit the sale of an annuity product unless the ~~insurance~~ producer has adequate knowledge of the product to recommend the annuity and the ~~insurance~~ producer is in compliance with the insurer's standards for product training. An ~~insurance~~ producer may rely on insurer-provided product-specific training standards and materials to comply with § 1.7 of this Part ~~this paragraph~~.
- B. Training
1. An ~~insurance~~ producer who engages in the sale of annuity products shall complete a one (1) time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
 2. ~~Insurance p~~roducers who hold a life insurance line of authority on the effective date of this Part and who desire to sell annuities shall complete the requirements of § 1.7 of this Part ~~this paragraph~~ within six (6) months after the effective date of this Part. Individuals who obtain a life insurance line of authority on or after the effective date of this Part may not engage in the sale of annuities until the annuity training course required under § 1.7 of this Part ~~this paragraph~~ has been completed.
 3. The minimum length of the training required under ~~this paragraph~~ § 1.7(B)(1) of this Part shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
 4. The training required under § 1.7(B)(1) of this Part ~~this paragraph~~ shall include information on the following topics:
 - a. The types of annuities and various classifications of annuities;
 - b. Identification of the parties to an annuity;
 - c. How product specific annuity contract features affect consumers;
 - d. The application of income taxation of qualified and non-qualified annuities;

- e. The primary uses of annuities; and
 - f. Appropriate standard of conduct, sales practices, replacement and disclosure requirements.
5. Providers of courses intended to comply with § 1.7(B)(1) of this Part ~~this paragraph~~ shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
6. A producer who has completed an annuity training course approved by the Department of Insurance prior to January 1, 2021, shall, within six (6) months after January 1, 2021, complete either:
- a. A new four (4) credit training course approved by the department of insurance after January 1, 2021; or
 - b. An additional one (1) time one (1) credit training course approved by the Department of Insurance and provided by the Department of Insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended Regulation.
67. A provider of an annuity training course intended to comply with § 1.7 of this Part ~~this paragraph~~ shall register as a CE provider in this State and comply with the Rules and guidelines applicable to insurance producer continuing education courses as set forth in Subchapter 50 Part 2 of this Chapter.
78. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with Subchapter 50 Part 2 of this Chapter.
89. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with Subchapter 50 Part 2 of this Chapter.
910. The satisfaction of the training requirements of another State that are substantially similar to the provisions of § 1.7 of this Part ~~this paragraph~~ shall be deemed to satisfy the training requirements of § 1.7 of this Part ~~this paragraph~~ in this State.

~~1011~~. An insurer shall verify that an ~~insurance~~-producer has completed the annuity training course required under § 1.7(B)(1) of this Part ~~this paragraph~~ before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under § 1.7(B)(1) of this Part ~~this paragraph~~ by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

1.8 Compliance, Mitigation, Penalties; Enforcement

A. An insurer is responsible for compliance with this Part. If a violation occurs, either because of the action or inaction of the insurer or its ~~insurance~~-producer, the commissioner may order:

1. An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this Regulation by the insurer's, an entity contracted to perform the insurer's supervisory duties or by ~~its-the insurance~~-producer's, ~~violation of this Part~~;
2. A general agency, independent agency or the ~~insurance~~-producer to take reasonably appropriate corrective action for any consumer harmed by the ~~insurance~~-producer's violation of this Part; and
3. Appropriate penalties and sanctions.

B. Any applicable penalty under R.I. Gen. Laws §§ 27-29-6 and 42-14-16 for a violation of this Part may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

C. The authority to enforce compliance with this Regulation is vested exclusively with the commissioner.

1.9 Recordkeeping

A. Insurers, general agents, independent agencies and ~~insurance~~-producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures and other information used in making the recommendations that were the basis for insurance transactions for five (5) years after the insurance transaction is completed by the insurer. An insurer is

permitted, but shall not be required, to maintain documentation on behalf of a ~~an insurance~~ producer.

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

1.10 Effective Date

The amendments to this Regulation take effect on January 1, 2021.

1.11 Severability

If any provision of this Part or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Part which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Part are severable.

Draft: 9/4/20

Comments are being requested on this draft document by Oct. 2, 2020. Comments should be sent only by email to Jolie Matthews at jmatthews@naic.org.

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION (#275)

BEST INTEREST STANDARD OF CONDUCT REVISIONS

FREQUENTLY ASKED QUESTIONS

This Frequently Asked Questions (FAQ) document is intended to specifically address those questions that are likely to arise as the states work to adopt the revised *Suitability in Annuity Transactions Model Regulation (#275)* and to assist in the uniform implementation and enforcement of its provisions across all NAIC member jurisdictions. No provision of this FAQ document is intended to supersede the specific language in Model #275.

This FAQ document is offered to any state that chooses to use it. It is not intended to expand the content of the model regulation but provides interpretive guidance regarding certain aspects of its provisions.

GENERAL

Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?

A1. The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is harmonization of the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but not a fiduciary standard.

Q2. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?

A2. Section 989J confirms state authority to regulate the sale of fixed indexed annuities and exemption from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled: 1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's *Suitability in Annuity Transactions Model Regulation (#275)*; and 2) "adopts rules that substantially meet or exceed the minimum requirements of any **successor modifications** to the model regulation[]" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and **any successor thereto**," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose:

“Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) specifically refers to this model regulation as the “Suitability in Annuity Transactions Model Regulation.” Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.”

As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020 to maintain their authority to regulate the sale of fixed annuities.

EXEMPTIONS

Q3. What is the intent of the exemption to the revised model’s provisions under Section 4A to allow a consumer in response to a direct response solicitation to purchase an annuity product where no recommendation is made based on information collected from the consumer?

A3. This exception from the rule was in the 2010 model rule and was not changed in the 2020 version. A direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, the Internet, a digital platform, or other mass communication media that does not involve a communication directed to a specific individual by a natural person, or by a simulated human voice.

BEST INTEREST STANDARD OF CONDUCT

Q4. What is the best interest standard of conduct and how would a producer or insurer satisfy it?

A4. To satisfy the best interest obligation, a producer or an insurer must satisfy the four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation.

To satisfy the four obligations, when making a recommendation, producers must:

- Know the consumer’s financial situation, insurance needs and financial objectives;
- Understand the available recommendation options;
- Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives;
- Communicate the basis of the recommendation to the consumer;
- Disclose their role in the transaction, their compensation, and any material conflicts of interest; and
- Document, in writing, any recommendation and the justification for such recommendation.

Q5. What types of recommendations fall under the best interest standard of conduct?

A5. All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in Section 5M, a “recommendation” is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?

A6. Yes, under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer.

CARE OBLIGATION

Q7. What is the intent of language in Section 6A(1)(c), which states “Producers shall be held to standards applicable to producers with similar authority and licensure?”

A7. The intent of this language is to help to ensure that in any compliance or enforcement action, a producer’s recommendation is compared only to other producers as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes.

DISCLOSURE OBLIGATION

Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed “Insurance Agent (Producer) Disclosure for Annuities” form in Appendix A prior to a recommendation, can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?

A8. Yes, a producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting. However, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation, the producer is expected to provide the consumer with an updated form.

CONFLICT OF INTEREST OBLIGATION

Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation, what other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?

A9. A producer who is also dually registered as an investment advisor under state securities law is required under Section 6A(3) to reasonably manage and disclose the related conflicts of interest. This management must commence when the producer first meets with a potential customer even before the dually licensed producer knows the ultimate capacity in which the producer will be acting. The actual capacity when the producer executes a specific transaction may not be known early in the relationship and the related professional or contractual obligations may not be determined based upon the specific facts and circumstances and the consumer profile information until later in the relationship, thus creating a conflict of interest for the producer. The dually licensed producer should assume that both Model #275 and the Investment Advisers Act apply, and that the producer must manage and disclose the conflict of interest.

Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage a material conflict of interest? Examples?

A10. The differences in professional and contractual obligations between a producer acting in the consumer's best interest at the time of the transaction and an investment advisor acting in the consumer's best interest over the term of a professional advisory contract are substantial. Managing this conflict of interest will require more than simple disclosure. The dually licensed producer must ensure that the customer has a timely comprehension of the producer's varied interests in the relationship decisions and the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's recommended professional relationship or

capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives.

SUPERVISION SYSTEM

Q11. Do these revisions require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?

A11. No, but the revisions do add additional insurer supervision requirements by requiring insurers to establish and maintain reasonable procedures in three additional areas:

- To assess whether a producer has provided to the consumer the information required by the revised model.
- To identify and address suspicious consumer refusals to provide consumer profile information.
- To identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices is provision intended to address?

A12. The requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product. As the provisions states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a specified or limited period of time are prohibited and should be identified and eliminated.

TRAINING

Q13. Do producers complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements?

A13. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state's effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement and disclosure requirements under the revised model. In adopting this section, a state could choose a different timeframe for this requirement.