

Date: 3/20/18

2018 Spring National Meeting  
Milwaukee, Wisconsin

**ANNUITY SUITABILITY (A) WORKING GROUP**

**Saturday, March 24, 2018**

**9:30 – 10:30 a.m.**

**Wisconsin Center—Room 103ABC—First Floor**

**ROLL CALL**

Dean L. Cameron, Chair	Idaho	Keith Nyhan	New Hampshire
Doug Ommen, Vice Chair	Iowa	James Regalbuto	New York
Jodi Lerner	California	Michelle Rafeld	Ohio
Franklin T. Pyle	Delaware	Frank Stone	Oklahoma
Tate Flott/Stacy Rinehart	Kansas	Elizabeth Kelleher Dwyer	Rhode Island
Adewole Odumade	Maryland	Michael Humphreys/Lorrie Brouse	Tennessee
Catherine Kirby	Michigan	Richard Wicka	Wisconsin
Matt Holman	Nebraska		

NAIC Support Staff: Jolie H. Matthews

**AGENDA**

1. Consider Adoption of its March 14, 2018, and 2017 Fall National Meeting Minutes—*Director Dean L. Cameron (ID)*
2. Hear Analysis of the Recent Federal Court Decisions Concerning the U.S. Department of Labor’s (DOL) Fiduciary Rule—*Jennifer McAdam (NAIC)*
3. Hear Comments from Stakeholders Regarding the Recent Federal Court Decisions Concerning the DOL’s Fiduciary Rule—*Director Dean L. Cameron (ID)*
4. Continue Discussion of the Comments Received on the Chairman’s Draft of Proposed Revisions to the *Suitability in Annuity Transactions Model Regulation (#275)*—*Director Dean L. Cameron (ID)*
5. Discuss Any Other Matters Brought Before the Working Group—*Director Dean L. Cameron (ID)*
6. Adjournment

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**Agenda Item #1**

**Consider Adoption of its March 14, 2018, and 2017 Fall National Meeting Minutes  
—*Director Dean L. Cameron (ID)***

Draft: 3/19/18

Annuity Suitability (A) Working Group  
Conference Call  
March 14, 2018

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call March 14, 2018. The following Working Group members participated: Dean L. Cameron, Chair (ID); Doug Ommen, Vice Chair (IA); Jodi Lerner (CA); Frank Pyle (DE); Tate Flott (KS); Catherine J. Kirby (MI); Bruce R. Ramage and Matt Holman (NE); Keith Nyhan (NH); James Regalbuto (NY); Michelle Rafeld (OH); Frank Stone (OK); Elizabeth Kelleher Dwyer (RI); Lorrie Brouse and Michael Humphreys (TN); and Richard Wicka (WI).

1. Discussed Comments Received on Chairman’s Draft of Proposed Revisions to Model #275

Director Cameron said the purpose of the Working Group’s call is to begin a section-by-section discussion of the comments received by the Jan. 22 public comment deadline on the chairman’s draft of proposed revisions to the *Suitability in Annuity Transactions Model Regulation* (#275) (Attachment ?-A1). He suggested using the comment chart (Attachment ?-A2) NAIC staff prepared to facilitate this discussion. The Working Group agreed to Director Cameron’s suggestion.

a. Section 1—Purpose

Starting with Section 1—Purpose, Director Cameron pointed out comments from several stakeholders. Commissioner Ommen acknowledged the New York State Department of Financial Services’ (NYDFS) efforts in its comments, which are based on its proposed rule, to better explain the provisions of Section 6—Duties of Insurers and of Insurance Producers. To address similar concerns, he made a motion, seconded by Ms. Rafeld, to add the following language to Section 1 to better reflect and clarify Section 6’s insurer and producer duties and responsibilities: “B. In order to make a recommendation of an annuity to a consumer that is [suitable/in the consumer’s best interest], the producer, or the insurer where no producer is involved, must employ a consumer-focused approach. In a consumer-focused approach, the producer, or the insurer where no producer is involved, must know the financial situation, objectives and needs of the consumer, know the features of the recommended annuity, place the consumer’s interest ahead of their own, make certain disclosures to ensure the consumer is fully informed, and abstain from certain prohibited practices. A producer, or the insurer where no producer is involved, must disclose and manage material conflicts of interest to ensure the recommendation is suitable for the particular consumer.”

Ms. Lerner expressed concern with the language “where no producer is involved.” Mr. Regalbuto expressed concern with the substantive nature of the language for inclusion in a purpose section and the possibility of it being inconsistent with Section 6’s provisions after the Working Group completes its review of that section. Commissioner Ommen acknowledged Mr. Regalbuto’s concerns, saying he was open to revisiting the language after the Working Group discusses Section 6. Ms. Brouse suggested the Working Group defer adoption of Iowa’s suggested language until the Working Group finishes its review of the entire draft. Other Working Group members expressed concern with the suggested language. After additional discussion, Commissioner Ommen agreed to withdraw his motion and defer discussion of Iowa’s suggested language to a later date.

b. Section 2—Scope

Director Cameron pointed out the comments received on Section 2—Scope, noting their similarity to each other. After discussion of the comments, Mr. Humphreys made a motion, seconded by Mr. Wicka, to adopt the Indexed Annuity Leadership Council’s (IALC) suggested revisions, but retain the words “or sale.” Mr. Holman noted the redundancy in using the words “solicitation and negotiation” given the definition of “recommendation” in Section 5N. The motion passed unanimously.

c. Section 4—Exemptions

Director Cameron said no comments were received on Section 3—Authority. Turning to Section 4—Exemptions, he pointed out the California Department of Insurance (DOI) comments suggesting the Working Group review the exemptions Section 4B to determine their continued appropriateness. Director Cameron suggested deferring such a review until a later date. The Working Group agreed. Director Cameron next discussed the Jackson National Life Insurance Company’s (Jackson) and the

Western & Southern Financial Group's (W&SFG) comments to add additional exemptions to the model. Ms. Brouse expressed support for Jackson's comments to carve out any recommendation by a specified fiduciary where no sales compensation is received and no surrender period or surrender charge, and she acknowledged Jackson's effort to try to differentiate between fee-based and other types of compensation. Mr. Regalbuto expressed opposition to both comments. After additional discussion, the Working Group decided not to add the additional exemptions, but left open the possibility for revisiting the issue at a later date.

d. Section 5—Definitions

Beginning with the definition of "annuity" in Section 5A, Director Cameron noted the NYDFS' suggestion to delete the definition because of its proposed rule that would expand the application of the rule's requirements to life insurance investment-type products. He explained that the Working Group would defer discussion of the issue of expanding Model #275's scope to include life insurance investment-type products until a later date.

The Working Group next discussed the definition of "best interest" in Section 5B. Director Cameron pointed out the NYDFS' comments suggesting deleting the definition. He explained that he believes the NYDFS suggests deletion because of the structural approach of its proposed rule, which would make such a definition unnecessary. Mr. Regalbuto explained NYDFS' approach and also noted his specific concern with some language in Section 5B(2). Commissioner Ommen expressed support for the NYDFS' suggestion to delete the "best interest" definition and the structural approach taken in its proposed regulation. He also said he would suggest retitling Section 6—Duties of Insurers and of Insurance Producers to Section 6—Best Interest Duties. Mr. Holman expressed support for Commissioner Ommen's comments. Ms. Lerner suggested the Working Group defer making any decisions on the definition of "best interest" until it discusses Section 6. The Working Group agreed.

The Working Group next discussed the definition of "cash compensation" in Section 5C. Ms. Lerner asked what the term "concession" meant. Mr. Regalbuto said "concession" refers to a type of compensation paid to a broker-dealer. Commissioner Ommen explained that some of the defined terms in Section 5 were derived from the Financial Industry Regulatory Authority's (FINRA) regulations, which could mean some of the language in these terms may not be applicable to insurance producers. The Working Group discussed the Insured Retirement Institute's (IRI) comments and the California DOI's comments. Commissioner Ommen expressed support for the California DOI's suggestion to add the words "or other remuneration." Mr. Regalbuto also expressed support for the language with the removal of the references to "solicitation" and "negotiation." Ms. Brouse expressed concern with the broadness of the California DOI's suggested language.

Mr. Holman made a motion, seconded by Ms. Lerner, to adopt the California DOI's suggested revisions with the deletion of the references to "solicitation" and "negotiation." The motion passed unanimously.

Having no further business, the Annuity Suitability (A) Working Group adjourned.

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## Draft Pending Adoption

Attachment Two  
Life Insurance and Annuities (A) Committee  
12/4/17

Draft: 12/13/17

Annuity Suitability (A) Working Group  
Honolulu, Hawaii  
December 3, 2017

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met in Honolulu, HI, and via conference call Dec. 3, 2017. The following Working Group members participated: Dean L. Cameron, Chair (ID); Doug Ommen, Vice Chair (IA); Jodi Lerner and Perry Kupferman (CA); Colleen Pawluczyk (DE); Tate Flott (KS); Lynn Beckner (MD); Catherine Kirby (MI); Matt Holman (NE); Keith Nyhan (NH); Mark McLeod (NY); Frank Stone (OK); Paula Pallozzi (RI); Michael Humphreys and Lorrie Brouse (TN); and Jennifer Stegall (WI). Also participating were: Steve Ostlund (AL); Karl Knable (IN); and Robert Wake (ME).

### 1. Adopted its Summer National Meeting Minutes

Mr. Humphreys made a motion, seconded by Commissioner Ommen, to adopt the Working Group's Aug. 6 minutes (*see NAIC Proceedings – Summer 2017, Life Insurance and Annuities (A) Committee, Attachment Three*) minutes. The motion passed unanimously.

### 2. Discussed the Working Group Chair Draft of Proposed Revisions to Model #275

Director Cameron said the Working Group's charges are to: 1) review and revise, as necessary, the *Suitability in Annuity Transactions Model Regulation* (#275); and 2) consider how to promote greater uniformity across NAIC member jurisdictions. He explained that in revising Model #275, the Working Group and stakeholders needed to keep in mind that the revisions to Model #275 need to be able to be successfully passed in the states without adversely affecting the ability of consumers to plan and have available to them the appropriate annuity products for their retirement needs.

Director Cameron explained that the proposed revisions to Model #275 (Attachment Two-A) were developed by a small drafting group composed of Working Group members from California, Idaho, Iowa, Nebraska, New York and Tennessee. He said the draft is by no means perfect and just a starting point to start the discussion. Director Cameron said that following this meeting, the Working Group will set a Jan. 22, 2018, public comment deadline to receive comments on the draft. He said the Working Group's ultimate goal is to complete its charge and send a revised model to the Life Insurance and Annuities (A) Committee for its consideration and adoption at the 2018 Spring National Meeting.

Jolie Matthews (NAIC) walked through the proposed revisions beginning with Model #275's title. She said the proposed revisions would revise Model #275's title to "Suitability and Best Interest Standard of Conduct in Annuity Transactions Model Regulation." Ms. Matthews said similar proposed revisions were made throughout the model, including Section 1—Purpose and Section 6—Duties of Insurers and of Insurance Producers. Director Cameron said these revisions were made because of the concern that an annuity product could be suitable for a consumer, but not in the consumer's best interest. They are two separate standards. As such, the small drafting group did not want to simply replace "suitability" with "best interest." Mr. Kupferman said the best interest standard should focus on the consumer's best interest. Director Cameron pointed out that the proposed definition of "best interest" in Section 5B—Definitions includes such language. Mr. Wake said he believes "suitability" is a subset of "best interest" because how can an annuity product be in the consumer's best interest and not also be suitable for the consumer. He said the proposed revisions broaden the concept of "suitability." Ms. Brouse said there is existing case law in many states related to "suitability" but not "best interest," which is another factor to consider in simply not replacing "suitability" with "best interest."

Ms. Matthews next pointed out the proposed revisions to Section 2—Scope. She said these proposed revisions were made for consistency with the *Producer Licensing Model Act* (#218). Ms. Matthews next discussed the proposed new definitions in Section 5—Definitions beginning with the definition of "best interest" in Section 5B. Commissioner Ommen said the small drafting group developed this definition from language in the U.S. Department of Labor's (DOL) fiduciary rule in an effort to try to develop a uniform standard of care across all of the regulated community. Mr. Kupferman expressed concern that the definition did not include a reference to surrender period. Mr. McLeod said that the definition needed to be stronger and that the proposed language was overly broad. Director Cameron noted that nothing prevents a state from deviating from the

## Draft Pending Adoption

Attachment Two  
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model to suit their needs and what will work in their state. He reminded everyone that ultimately the revised model should be a model that can be passed by all of the states and receive a sufficient number of votes in favor of adoption by the Life Insurance and Annuities (A) Committee to be considered an NAIC model. Director Cameron urged caution in going too far in either direction. Ms. Matthews pointed out other new proposed definitions, such as the definition of “cash compensation” in Section 5C and the definition of “material conflict of interest” in Section 5J. She also pointed out the proposed revisions to the definition of “suitability information” in Section 5P. Commissioner Ommen noted that the new and revised definitions were an effort to be consistent with the DOL fiduciary rule and Financial Industry Regulatory Authority (FINRA) requirements.

Ms. Matthews next discussed the proposed revisions to Section 6—Duties of Insurance and of Insurance Producers. She highlighted the proposed new language requiring an insurance producer or if no producer is involved, an insurer to satisfy certain requirements before making a recommendation, including disclosing to the consumer any limitations on the types of products that can be recommended. Ms. Matthews said the Section 6 proposed revisions also include new consumer disclosure requirements that an insurance producer or an insurer must disclose to the consumer in making a recommendation, such as any and all material conflicts of interest and the basis or bases for the recommendation. Mr. McLeod said disclosure is not enough. He said an insurance producer or an insurer should have no conflicts of interest in making a recommendation. Mr. McLeod also said Model #275 should apply to life insurance products in addition to annuity products.

Ms. Matthews next discussed the proposed new Section 7—Non-Cash Compensation Disclosure Requirement. She said this section would require an insurance producer or an insurer, where no producer is involved, to disclose to the consumer information regarding the non-cash compensation that exceeds \$100 per producer per year that the producer receives from an insurer or intermediary that is tied to the sale of annuities including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing and advertising. Ms. Matthews next discussed the proposed new Section 8—Prohibited Practices. She said this section would require an insurance producer or an insurer, where no producer is involved, to: 1) receive no more than reasonable cash compensation in making a recommendation; 2) not make any materially misleading statements regarding the annuity transaction; and 3) not base a recommendation on the producer’s or the insurer’s own financial interest.

Ms. Matthews next discussed Section 9—Insurance Producer Training. She noted the addition of the word “replacement” in Section 9A and the addition of a proposed new training topic in Section 9B(3) regarding financial exploitation of seniors and other vulnerable adults. Lastly, Ms. Matthews pointed out the proposed revision in Section 9B(4) providing that a training course that complies with FINRA Rule 1250 would satisfy the requirements in Section 9B(3).

Ms. Matthews next discussed Section 11—Recordkeeping. She said the proposed revisions eliminate the optional nature of this section and would require that all records, including the consumer disclosures, and other information used in making a recommendation be maintained or be able to be made available to the commissioner for six years.

Birny Birnbaum (Center for Economic Justice—CEJ) asked if the intent of the proposed revisions were to increase or decrease what types of annuity products or product features can be sold. He said that if that is the intent, how will state insurance regulators monitor to see if this intent is being accomplished. Director Cameron said he believes annuity sales already have fundamentally changed and the proposed revisions are not meant to affect this further. He said the proposed revisions are an attempt to eliminate the types of practices seen in the past that were not considered appropriate. Commissioner Ommen said the proposed revisions ultimately will have an impact on annuity sales, particularly if non-cash compensation is limited. However, he said that is not the intent of the revisions. The revisions will have an impact, but that is not the intent.

Bruce Ferguson (American Council of Life Insurers—ACLI) reiterated the ACLI’s belief that there needs to be a uniform standard of care across all of the regulated community. He said the proposed revisions to Model #275 are consistent with this. Mr. Ferguson said the U.S. Securities and Exchange Commission (SEC), the DOL, FINRA and state insurance regulators need to work together to ensure such uniformity because it should be the same standard of care imposed no matter where a consumer goes to purchase an investment product to meet his or her needs. He noted that the DOL wants to work with the NAIC to blend and harmonize what is in the proposed revisions and the DOL’s fiduciary rule. Mr. Ferguson said the ACLI has a number of questions about the proposed revisions, particularly related to the reasonable compensation issue.

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12/4/17

Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) said NAIFA does not oppose or fear a best interest standard. He reiterated that NAIFA members have relationships with consumers and, as such, annuity sales are driven by that relationship and not the type of producer compensation structure. Mr. Sanders also raised a number of questions related to the proposed revisions particularly as related to the compensation issue. Director Cameron said the intent behind some of the provisions concerning the compensation issue was to create a safe harbor, such that if the insurance producer or insurer does the following, then they satisfy the model's requirements. He highlighted the draft language in Section 6C(2), which requires an insurance producer or insurer to disclose to the consumer when making a recommendation the percentage or amount of cash compensation above 3%, whether by commission or fee, that the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity. Director Cameron said he was not sure if 3% was the appropriate threshold, but he believes not having a threshold amount would require every insurance producer to look at the compensation, whether fee or commission, for each annuity sale. Mr. Humphreys emphasized that this an initial draft to start the discussion among the stakeholders.

Wes Bissett (Independent Insurance Agents and Brokers of America—IIABA) said the IIABA is concerned about the process. He said the IIABA believes the Working Group is moving too quickly. Mr. Bissett expressed agreement with some of the ACLI's comments about uniformity across the regulated community. He said the IIABA's initial thoughts about the draft are that many of its provisions would be controversial in many states. Mr. Bissett said the IIABA is concerned that some of the draft's subjective provisions could lead to litigation. He also noted other concerns in the draft, particularly with the compensation provisions in Section 6.

Jason Berkowitz (Insured Retirement Institute—IRI) said the IRI will provide written comments, but preliminarily, the IRI is unclear about how some of the draft's provisions would work with independent insurance producers, as opposed to captive agents, particularly concerning an insurer's ability to determine compliance with those provisions. He outlined other specific concerns with the proposed revisions. Mr. Berkowitz asked about the Working Group's intent regarding the draft and working with federal regulators. Director Cameron said the NAIC intends to work with federal regulators in order to have consistent standards across all of the regulated community and that having an initial draft helps to further those discussions.

Mr. Birnbaum asked if it is the Working Group's intent that the sole means of managing conflicts of interest is through consumer disclosure. Director Cameron said not necessarily and suggested that Mr. Birnbaum submit written comments on the issue.

Having no further business, the Annuity Suitability (A) Working Group adjourned.

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**Agenda Item #2**

**Hear Analysis of the Recent Federal Court Decisions Concerning the U.S. Department of Labor's (DOL) Fiduciary Rule—*Jennifer McAdam (NAIC)***

*10th Circuit Court of Appeals opinion filed Tuesday, March 13: <https://www.ca10.uscourts.gov/opinions/17/17-3038.pdf>*

*5th Circuit Court of Appeals opinion filed Thursday, March 15: <http://www.ca5.uscourts.gov/opinions/pub/17/17-10238-CV0.pdf>*

**Agenda Item #3**

**Hear Comments from Stakeholders Regarding the Recent Federal Court Decisions Concerning the DOL's Fiduciary Rule—*Director Dean L. Cameron (ID)***

**Agenda Item #4**

**Continue Discussion of the Comments Received on the Chairman’s Draft of  
Proposed Revisions to the *Suitability in Annuity Transactions Model Regulation* (#275)  
—*Director Dean L. Cameron (ID)***

Draft: 11/24/17  
Model #275

~~SUITABILITY AND BEST INTEREST STANDARD OF CONDUCT~~ ~~IN~~ [CONSUMER FOCUSED]  
ANNUITY TRANSACTIONS MODEL REGULATION

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**Section 1. Purpose**

A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers ~~that are suitable, in their best interest and result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.~~

A-B. In order to make a recommendation of an annuity to a consumer that is in a consumer's best interest, the producer or insurer where no producer is involved, must employ a consumer-focused approach. In a consumer-focused approach, the producer or insurer where no producer is involved, should know the financial situation, objectives and needs of the consumer, know the features of the recommended annuity, place the consumer's interest ahead of their own, make certain disclosures to ensure the consumer is fully informed, and abstain from certain prohibited practices. A producer, or insurer where no producer is involved, must disclose and manage material conflicts of interest to ensure the recommendation is suitable for the particular consumer.

B-C. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

**Drafting Note:** The language of subsection CB comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection CB.

**Drafting Note:** Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation," confirming the exemption of certain annuities from the Securities Act of 1933 and confirming state regulatory authority. The Best Interest [Consumer-Focused] Annuity Transactions Model Regulation is a successor rule that exceeds the requirement of the 2010 model.

[Until such time as the NAIC is able to determine whether the standards of conduct applicable to securities investment advisers, broker-dealers and registered representatives will be changed by the SEC and FINRA, and if so, what the changes will be, it is not clear whether this model should be a "Best Interest" or "Consumer-Focused" standard of conduct.]

**Section 2. Scope**

This regulation shall apply to any ~~solicitation, negotiation, recommendation or sale of an annuity to purchase, exchange or replace 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.~~

**Section 3. Authority**

This regulation is issued under the authority of [insert reference to enabling legislation].

**Drafting Note:** States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

**Section 4. Exemptions**

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- B. Contracts used to fund:
  - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
  - (3) A government or church plan defined in section 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 section 457 of the IRC;
  - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
  - (5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
  - (6) Formal prepaid funeral contracts.

**Section 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. (1) "Best interest" means, at the time the annuity is issued, acting with reasonable diligence, care, skill and prudence in a manner that puts the interest of the consumer first and foremost.~~
- ~~C. (2) "Best interest" does not mean a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction. "Best interest" also does not mean the recommendation is the single "best" annuity product available in the marketplace at the time of the annuity transaction, but based on the insurance producer's judgment acting with reasonable diligence, care, skill and prudence, the producer believes the recommendation is in the best interest of the consumer~~
- ~~E.B.~~
- ~~F.C. "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit, or other remuneration received in connection with the solicitation, negotiation, recommendation or sale of an annuity.~~
- ~~B.D.~~ "Continuing education credit" or "CE credit" means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].
- ~~C.E.~~ "Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].

Iowa Proposed Revisions 3-15-18  
(Iowa's proposed revisions to the 11/24/17 draft are in blue)

- ~~DF.~~ “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
- ~~EG.~~ “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- ~~FH.~~ “Insurance producer” or “producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
- ~~I.~~ “Intermediary” means an entity contracted with the insurance company to facilitate the sale of an annuity.
- ~~J.~~ (1) “Material conflict of interest” means a financial interest of an ~~insurance~~ producer, or the insurer where no producer is involved, that ~~could a reasonable person would expect to affect the ability of the producer or insurer to put the consumer’s interests ahead of the producer’s or insurer’s interest. impartiality of the recommendation.~~  
(2) “Material conflict of interest” includes financial incentives or rewards offered to or received by an ~~insurance~~ producer, or a direct interest or ownership in an insurer by an ~~insurance~~ producer or an immediate family member of an ~~insurance~~ producer.
- ~~K.~~ “Negotiate” has the meaning stated in ~~[insert reference to state law equivalent to Section 2K of the Producer Licensing Model Act (#218)].~~
- ~~L-K.~~ “Non-cash compensation” means any form of compensation received in connection with the recommendation or sale of an annuity that is not cash compensation, including but not limited to, merchandise, gifts and prizes, travel expenses or meals and lodging.
- ~~M-L.~~ “Reasonable cash compensation” means cash compensation that reflects the time and complexity of the product and the transaction involved ~~and is not connected to volume of production.~~
- ~~GN.~~ “Recommendation” means advice provided by a ~~insurance~~ producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.
- ~~HO.~~ “Replacement” means a transaction in which a new policy or contract 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 producer, that by reason of the transaction, an existing policy or contract has been or is to be:
- (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.

**Drafting Note:** The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

- ~~IP.~~ “Suitable” means in the furtherance of a consumer’s objectives and needs under the circumstances then prevailing and based upon the facts disclosed by the consumer, or known at the time of the

Iowa Proposed Revisions 3-15-18  
(Iowa's proposed revisions to the 11/24/17 draft are in blue)

recommendation by the producer, or insurer where no producer is involved, as to the insurance, annuity and other financial products authorized to be recommended, and as to the consumer's financial situation, objectives and needs, including the consumer's suitability information.

Q. "Suitability information" means information that is reasonably appropriate to determine the ~~suitability of a recommendation~~ is suitable and in the best interest of the consumer, 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 or financial products, including investment, annuities and life insurance holdings;
- (9) Liquidity needs;
- (10) Liquid net worth;
- (11) Risk tolerance, including changes in nonguaranteed elements in an annuity contract; and
- (12) Financial resources used to fund the annuity; and
- ~~(12)~~ (13) Tax status.

**Section 6. Best Interest [Consumer-Focused] Duties of Insurers and of Insurance Producers**

A. 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 only make a recommendation that is suitable and in the best interest of the consumer at the time it is made based 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) Make a suitable recommendation; and
- (2) Act with reasonable diligence, care, skill, and prudence in placing the interest of the consumer ahead of the financial or other interests of the producer or insurer.

This requirement does not mean that a recommendation must be the least expensive annuity product, or the product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction.

A.B. ~~Prior to the recommendation of an annuity, an insurance producer, or an insurer where no producer is involved, shall do all of the following:~~

- (1) Make reasonable efforts to obtain the consumer's suitability information;
- (2) Evaluate the types of annuities, insurance, and financial products the producer is authorized to consider and discuss that which correspond to the consumer's disclosed suitability information and address

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the consumer's financial situation, objectives and needs; and

(3) Disclose to the consumer any limitations the producer or the insurer has in regard to the following:

(a) The type of financial products that can be provided;

(b) Whether only specific insurer company products or a limited range of annuity products can be offered;

(c) The scope of services provided; and

(d) The scope of the producer's licenses.

B.C. In making a recommendation, the ~~insurance~~ producer, or insurer where no producer is involved, shall disclose to the consumer:

(1) Any and all material conflicts of interest;

(2) ~~The percentage or amount of cash compensation above three (3) percent, whether by commission or fee.~~ The type of cash compensation, including whether by commission or fee, the ~~insurance~~ producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity. If paid by commission as part of premium, the producer shall disclose either the dollar amount or the percentage of commission. The producer shall also disclose whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the amount of time and amount of the occurrence. ~~;~~ and

(~~2~~)<sup>(3)</sup> The type of non-cash compensation that exceeds \$500 per producer per year the producer may receive from an insurer or intermediary that is connected to the sale of the annuity including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing, and advertising; and

(~~3~~)<sup>(4)</sup> The basis or bases of the recommendation.

C.D. In making a recommendation, the ~~insurance~~ producer, or insurer where no producer is involved, shall have a reasonable basis to believe all of the following:

(1) 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, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

**Drafting Note:** If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

(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 best interest of the consumer (and in the case of an exchange or replacement, the transaction as a whole is suitable and in the best interest of the consumer) 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 and in the best interest of the consumer including taking into consideration whether:

(a) 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),



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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 the replacing product would provide a substantial financial benefit to the consumer over the life of the product; and
- (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 3660 months.

~~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. Prior to the recommendation or sale of an annuity, a producer, or insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.~~

~~EE.~~ Except as permitted under subsection ~~DE~~, 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.

~~DE.~~ (1) ~~Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A, B, or C related to any annuity transaction if An insurer is not obligated to determine an annuity is suitable, but instead, shall determine the annuity is reasonable prior to issuance based on the circumstances actually known to the insurer at the time the annuity is issued if any of the following situations occur:~~

~~(a)(1)~~ ~~No~~ The producer makes no ~~No~~ recommendation is made ~~is made~~;

~~(b)(2)~~ A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

~~(c)(3)~~ A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

~~(d)(4)~~ A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the ~~insurance~~ producer.

(2) An insurer shall not issue an annuity contract subject to paragraph (1) unless the transaction is reasonable based upon all the information actually known to the insurer at the time the annuity is issued.

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

(1) Make a record of any recommendation and the basis or bases of the recommendation subject to ~~section 6A of~~ this regulation;

(2) Document any recommendation;

~~(3)~~ Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

~~(4)~~ 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.

~~FH.~~ (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its ~~insurance~~ producers' compliance with this regulation, including, but not limited to, the

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following:

- (a) The insurer shall maintain reasonable procedures to inform its ~~insurance~~ producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant ~~insurance~~-producer training manuals;
  - (b) The insurer shall establish standards for ~~insurance~~-producer product training and shall maintain reasonable procedures to require its ~~insurance~~-producers to comply with the requirements of section ~~79~~ of this regulation;
  - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its ~~insurance~~ producers;
  - (d) The insurer shall maintain procedures for 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 ~~and in the best interest of a consumer~~. 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;
  - (e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable ~~and are not in the best interest of the consumer~~. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
  - (f) The insurer shall annually provide a 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.
  - (g) The insurer shall maintain reasonable procedures to ensure producers adequately disclosure information as required by this regulation.
- (2)
- (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section ~~810~~ of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
  - (b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
    - (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
    - (ii) 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.

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- (3) An insurer is not required to include in its system of supervision an ~~insurance~~ producer's recommendations to consumers of products other than the annuities offered by the insurer.

**GI.** ~~An~~ Neither a insurance producer nor insurer shall ~~not~~ dissuade, or attempt to dissuade, a consumer from:

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

**HJ.** (1) Sales made in compliance with FINRA rules 2111 and 3220, and related or successor rules requirements pertaining to suitability ~~suitability~~ best interest standard and supervision ~~of annuity transactions~~ shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if in connection with the sale of the annuity, the broker-dealer and registered representative have complied with the FINRA standards of conduct applicable to variable annuity sales, the suitability ~~best interest standard~~ and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce ~~(including investigate)~~ the provisions of this regulation.

**Drafting Note:** Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
  - (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
  - (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

**Section 7. Non-Cash Compensation Disclosure Requirement**

~~In addition to the disclosures required under Section 6 of this regulation, an insurance producer or an insurer, where no producer is involved, shall disclose to the consumer information regarding the non-cash compensation that exceeds \$100 per producer per year the producer receives from an insurer or intermediary that is tied to the sale of annuities including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing, and advertising.~~

**Section 8. Prohibited Practices**

An insurance producer or an insurer where no producer is involved:

- (1) Shall receive no more than reasonable cash compensation in making a recommendation;
- (2) Shall not make any materially misleading statements regarding the annuity transaction;
- ~~(2)~~(3) Shall not state or imply to the consumer that a recommendation is part of financial planning, financial advice, investment management or related serviced unless the producer has a specific certification or professional designation in that area; and
- ~~(3)~~(4) Shall not base a recommendation on the producer's or insurer's own financial interest.

**Section 79. Insurance-Producer Training**

- A. ~~An insurance~~ producer shall not solicit the sale or replacement of an annuity product unless the ~~insurance~~ producer has adequate knowledge of the product to recommend the annuity and the ~~insurance~~ producer is in

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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 this subsection.

- B.
- (1) (a) An ~~insurance~~ producer who engages in the sale of annuity products shall complete a one- time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
  - (b) ~~Insurance-P~~producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
- (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
  - (3) The training required under this subsection 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;
    - (f) Financial exploitation of seniors and other vulnerable adults; and
    - (~~g~~) Appropriate sales practices, replacement and disclosure requirements, including the requirements under this regulation.
  - (4) ~~(a)~~ Providers of courses intended to comply with this subsection 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 annuity products. Additional topics may be offered in conjunction with and in addition to the required outline.  
  
(b) A training course that complies with the requirements of FINRA Rule 1250 meets the requirements of Paragraph (3).
  - (5) A provider of an annuity training course intended to comply with this subsection 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 [insert reference to State law or regulations governing producer continuing education course approval].
  - (6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].
  - (7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].
  - (8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

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- (9) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection 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.

**Section 810. Compliance Mitigation; Penalties**

- A. An insurer is responsible for compliance with this regulation. 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 violation of this regulation by the insurer's, or by its insurance producer's, or any third party that the insurer contracts with for performance of suitability oversight or review ~~violation of this regulation;~~
  - (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 regulation; and
  - (3) Appropriate penalties and sanctions.
- B. Any applicable penalty under [insert statutory citation] for a violation ~~of this~~ of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] 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.

**Drafting Note:** Subsection B above is intended to be consistent with the commissioner's discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

**Drafting Note:** A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, "shall" should be substituted for "may" in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State's statute that authorizes the commissioner to impose penalties and fines.

**Section 911. ~~{Optional}~~ 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 and other information used in making the recommendations that were the basis for insurance transactions for ~~{insert number}~~ six (6) 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 an insurance producer.

**Drafting Note:** States should review their current record retention laws ~~and specify a time period that is consistent with those laws. For some States this time period may be five (5) years for consistency with Subsection A above.~~

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

**Drafting Note:** This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

**Section 1012. Effective Date**

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The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on [insert date], whichever is later.

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**Suitability in Annuity Transactions Model Regulation (#275)**  
Suggested Comments to Revise Draft Dated Nov. 24, 2017  
Jan. 22, 2018 Comment Deadline  
(Assumes proposed revisions are adopted)

Revised: 2/12/2018

<b>Section 1. Purpose</b>	
<b>A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that are suitable, in their best interest and result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.</b>	
<b>American Council of Life Insurers (ACLI)</b>	A. The purpose of this regulation is to require insurers to establish a system to supervise <u>annuity</u> recommendations and to set forth standards and procedures for recommendations <u>of annuity products by insurance producers and insurers, where no producer is involved,</u> to consumers that are <u>suitable,</u> in <u>theirthe consumer's</u> best interest <del>and result in transactions result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.</del>
<b>National Association of Insurance and Financial Advisors (NAIFA)</b>	A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that are <u>suitable,</u> in their best interest and result in transactions result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
<b>New York State Department of Financial Services (NYS DFS) – Based on Proposed Rule Provisions</b>	A. <del>(1) The purpose of this regulation is to require insurers</del> <u>This part clarifies the duties and obligations of insurers, including fraternal benefit societies by requiring them</u> to establish <del>a system to supervise recommendations and to set forth</del> standards and procedures for recommendations to consumers <u>with respect to policies delivered or issued for delivery in this state so that any transaction with respect to those policies is in the best interest of the consumer and appropriately addresses</u> <del>that are suitable, in their best interest and result in transactions result in transactions involving annuity products so that</del> the insurance needs and financial objectives of <u>the</u> consumers at the time of the transaction <del>are appropriately addressed.</del>  <u>(2) This part further clarifies the duties and obligations of producers when making recommendations to consumers with respect to policies delivered or issued for delivery in this state to help ensure that a transaction is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer at the time of the transaction.</u>
<b>California Department</b>	A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards

<b>of Insurance (CA DOI)</b>	and procedures for recommendations to consumers that are suitable, in <del>their</del> <u>the consumers'</u> best interest and result in transactions result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
<b>B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.</b>	
<b>Drafting Note:</b> The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.	
<i>No Comments Received</i>	
<b>Section 2. Scope</b>	
<b>This regulation shall apply to any solicitation, negotiation, recommendation or sale of an annuity.</b>	
<b>Indexed Annuity Leadership Council (IALC)</b>	This regulation shall apply to any <del>solicitation, negotiation,</del> recommendation <del>or sale</del> of an annuity.
<b>Insured Retirement Institute (IRI)</b>	This regulation shall apply to any <del>solicitation, negotiation,</del> recommendation <del>or sale of an annuity to purchase, exchange or replace 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.</del>
<b>NAIFA</b>	<del>Subject to the exemptions set forth below, This</del> regulation shall apply to any <del>solicitation, negotiation,</del> recommendation or sale of an annuity.
<b>NYS DFS – Based on Proposed Rule Provisions</b>	This regulation shall apply to any <del>solicitation, negotiation, recommendation or sale of an annuity</del> <u>transaction or recommendation with respect to a proposed or in-force policy.</u>  [NOTE: “Policy means a life insurance policy, annuity contract, or a certificate issued by a fraternal benefit society or under a group life insurance policy or group annuity contract.” <u>Sec. 224.3(d)</u> ]



<b>Western &amp; Southern Financial Group (W&amp;SFG)</b>	This regulation shall apply to any <del>solicitation, negotiation,</del> recommendation or sale of an annuity.
<b>Section 3. Authority</b>	
This regulation is issued under the authority of [insert reference to enabling legislation].	
<b>Drafting Note:</b> States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.	
<i>No Comments Received</i>	
<b>Section 4. Exemptions</b>	
Unless otherwise specifically included, this regulation shall not apply to transactions involving:	
<i>No Comments Received</i>	
<b>A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;</b>	
<i>No Comments Received</i>	
<b>B. Contracts used to fund:</b>	
(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);	
(2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;	
(3) A government or church plan defined in section 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 section 457 of the IRC;	

<p><b>(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;</b></p> <p><b>(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or</b></p> <p><b>(6) Formal prepaid funeral contracts.</b></p>	
<p><b>CA DOI</b></p>	<p><b>SUGGESTS REVIEWING EXEMPTIONS TO DETERMINE IF ANY INADVERTANTLY EXCLUDE SITUATIONS WHERE PRODUCERS SOLICIT INDIVIDUAL EMPLOYEES TO PURCHASE ANNUITIES WHICH ARE OFFERED AS PART OF ONE OR MORE OF THE ENUMERATED RETIREMENT SAVINGS PLANS.</b></p> <p>B. Contracts used to fund:</p> <p>(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);</p> <p>(2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;</p> <p>(3) A government or church plan defined in section 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 section 457 of the IRC;</p> <p>(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;</p> <p>(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or</p> <p>(6) Formal prepaid funeral contracts.</p>
<p><b>Additional Suggested Subsections</b></p>	
<p><b>Jackson National Life Insurance Company (Jackson)</b></p>	<p><u>C. Any recommendation by a specified fiduciary provided that:</u></p> <p><u>(1) No sales compensation is received by the specified fiduciary, not including any compensation paid directly by the consumer to the</u></p>

	<p><u>specified fiduciary; and</u></p> <p><u>(2) The annuity has no surrender period or surrender charge.</u></p>
W&SFG	<p><u>C. Subsequent deposits of annuity premium whether or not the deposit is the result of a recommendation.</u></p>
<b>Section 5. Definitions</b>	
<b>A. Annuity</b>	<p><b>“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></p>
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<p><del>“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.</del></p>
<b>B. Best Interest</b>	<p>(1) <b>“Best interest” means, at the time the annuity is issued, acting with reasonable diligence, care, skill and prudence in a manner that puts the interest of the consumer first and foremost.</b></p> <p>(2) <b>“Best interest” does not mean a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction. “Best interest” also does not mean the recommendation is the single “best” annuity product available in the marketplace at the time of the annuity transaction, but based on the insurance producer’s judgment acting with reasonable diligence, care, skill and prudence, the producer believes the recommendation is in the best interest of the consumer.</b></p>
<b>U.S. Department of Labor (DOL) – Best Interest Contract Exemption (BICE) Regulation</b>	<p><del>(1) “Best interest” means, at the time the annuity is issued, acting with reasonable diligence, care, skill and prudence in a manner that puts the interest of the consumer first and foremost.</del></p> <p><del>(2) “Best interest” does not mean a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction. “Best interest” also does not mean the recommendation is the single “best” annuity product available in the marketplace at the time of the annuity</del></p>

	<p><del>transaction, but based on the insurance producer’s judgment acting with reasonable diligence, care, skill and prudence, the producer believes the recommendation is in the best interest of the consumer</del></p> <p><u>Investment advice is in the “Best Interest” of the [consumer] when the [producer] and [insurer] providing the advice act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the [consumer], without regard to the financial or other interests of the [producer] or [insurer], or other party. [Insurers] that limit investment recommendations, in whole or part, based on whether the investments are Proprietary Products or generate Third Party Payments, and [producers] making recommendations to such limitations are deemed to satisfy the Best Interest standard when [the insurer ensures the producer has made detailed disclosures concerning this limitation, conflicts of interest, and compensation considerations; has supervisory policies and procedures to ensure compliance; and has documented affirmation that the recommendation is “not imprudent;” all as required under Section IV(b) of the BICE].</u></p>
<p><b>ACLI</b></p>	<p><del>(1) “Best interest” means, at the time the annuity is issued, acting with reasonable diligence, care, skill and prudence in a manner that puts the interest of the consumer first and foremost.</del></p> <p><del>(2) “Best interest” does not mean a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction. “Best interest” also does not mean the recommendation is the single “best” annuity product available in the marketplace at the time of the annuity transaction, but based on the insurance producer’s judgment acting with reasonable diligence, care, skill and prudence, the producer believes the recommendation is in the best interest of the consumer</del></p> <p><u>“Best interest:” A recommendation is in the “best interest” of the consumer if, at the time the recommendation is made, the insurance producer, or the insurer where no producer is involved, acts with reasonable diligence, care, skill and prudence; bases the annuity recommendation on the client’s insurance needs and financial objectives as set forth in the Consumer Profile Information; and places the client’s interest above the financial interest of the insurance producer or insurer.</u></p> <p><u>(1) To act in the “Best Interest” does not mean a producer or insurer is required to recommend the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, or the single "best" annuity product available in the marketplace at the time of the annuity recommendation, but based on the insurance producer's judgment, or the insurer's judgement where no producer is involved, acting with reasonable diligence, care, skill and prudence, the recommendation is made in the consumer’s best interest.</u></p> <p><u>(2) The mere receipt by an insurance producer, or the insurer where no producer is involved, of any cash or non-cash compensation for or related to a recommendation is not inconsistent with the requirements of this Regulation.</u></p>

	<p><u>(3) The fact that an insurance producer, or the insurer where no producer is involved, offers or recommends proprietary or a limited range of annuity products (including underlying sub-accounts) or product types is not inconsistent with the requirements of this Regulation.</u></p> <p><u>(4) The fact that an insurance producer, or the insurer’s representative where no producer is involved, receives health, retirement, or other employee benefits provided by an insurer is not inconsistent with the requirements of this regulation, nor does it need to be specifically disclosed as a material conflict of interest, or additional cash or non-cash compensation.</u></p>
<p><b>The Committee of Annuity Insurers (CAI)</b></p>	<p>(1) “Best interest” means, at the time the <del>annuity is issued</del><u>recommendation is made</u>, acting with reasonable diligence, care, skill and prudence in a manner that puts the interest of the consumer first <del>and foremost</del>.</p> <p>(2) “Best interest” does not mean a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction. “Best interest” also does not mean the recommendation is the single “best” annuity product available in the marketplace at the time of the annuity transaction, but based on the insurance producer’s judgment acting with reasonable diligence, care, skill and prudence, the producer believes the recommendation is in the best interest of the consumer.</p> <p><u>(3) “Best interest” does not impose on an insurance producer, or an insurer where no producer is involved, any affirmative ongoing duty to monitor the annuity post-sale and provide advice to the purchaser.</u></p> <p><u>(4) The fact that an insurance producer, or the insurer where no producer is involved, offers or recommends proprietary product types is not inconsistent with the requirements of this regulation.</u></p>
<p><b>IRI</b></p>	<p>(1) “Best interest” means, at the time the annuity is <del>issued</del><u>recommended</u>, acting with reasonable diligence, care, skill and prudence in a manner that puts the interest of the consumer <del>first and foremost</del><u>ahead of the financial or other interests of the producer</u>.</p> <p>(2) “Best interest” does not mean a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity <del>transaction</del><u>recommendation</u>. “Best interest” also does not mean the recommendation is the single “best” annuity product available in the marketplace at the time of the annuity <del>transaction</del><u>recommendation</u>, but based on the insurance producer’s judgment acting with reasonable diligence, care, skill and prudence, the producer believes the recommendation is in the best interest of the consumer.</p>
<p><b>CA DOI</b></p>	<p>(1) “Best interest” means, at the time the annuity is <u>offered, sold,</u> issued <u>and delivered</u>, acting with <u>the</u> reasonable diligence, care, skill and prudence, <u>that a reasonably prudent person acting in like capacity and familiar with such matters would act, and</u> in a manner that puts the interest of the consumer first and foremost.</p>

	<p>(2) “Best interest” does not <del>mean</del><u>require that</u> a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction. “Best interest” also does not <del>mean</del><u>require that</u> the recommendation is the single “best” annuity product available in the marketplace at the time of the annuity transaction, <del>but based on the insurance producer’s judgment acting with reasonable diligence, care, skill and prudence, the producer believes the recommendation is in the best interest of the consumer.</del> <u>However, as part of acting in the consumer’s best interest in compliance with subparagraph B. (1) above, if the producer and/or insurer recommend the purchase of an annuity, the annuity recommended and issued must be the best annuity for the consumer’s circumstances sold by the insurance producer and insurer where no producer is involved, taking into consideration the consumers’ suitability information; the price; and annuity contract terms, including but not limited to the fees, interest rate, surrender charge period, riders, and other information that is known or should be known by the producer or insurer if no producer is involved.</u></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>(1) “Best interest” means, at the time the annuity is issued, acting with reasonable diligence, care, skill and prudence in a manner that puts the interest of the consumer first and foremost.</del></p> <p><del>(2) “Best interest” does not mean a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction. “Best interest” also does not mean the recommendation is the single “best” annuity product available in the marketplace at the time of the annuity transaction, but based on the insurance producer’s judgment acting with reasonable diligence, care, skill and prudence, the producer believes the recommendation is in the best interest of the consumer.</del></p>
<p><b>C. Cash compensation</b></p>	<p><b>“Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override or cash benefit received in connection with the solicitation, negotiation, recommendation or sale of an annuity.</b></p>
<p><b>ACLI</b></p>	<p>“Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override or cash benefit received <u>by a producer from an insurer, intermediary or directly from the consumer,</u> in connection with the <del>solicitation, negotiation,</del> recommendation <del>or sale</del> of an annuity.</p>
<p><b>CAI</b></p>	<p>“Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override or cash benefit received in connection with the <del>solicitation, negotiation, recommendation or</del> sale of an annuity.</p>

<b>IRI</b>	“Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override or cash benefit received in connection with the <del>solicitation, negotiation,</del> recommendation <del>or sale</del> of an annuity.
<b>CA DOI</b>	“Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override or cash benefit <u>or other remuneration</u> received in connection with the solicitation, negotiation, recommendation or sale of an annuity.
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<del>“Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override or cash benefit received in connection with the solicitation, negotiation, recommendation or sale of an annuity.</del>
<b>D. Continuing education credit or CE credit</b>	“Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].
<i>No comments received</i>	
<b>E. Continuing education provider or CE provider</b>	“Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].
<i>No comments received</i>	
<b>F. FINRA</b>	“FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
<i>No comments received</i>	
<b>G. Insurer</b>	“Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

No comments received	
<b>H. Insurance producer or producer</b>	<b>"Insurance producer" or "producer" means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.</b>
IRI	"Insurance producer" or "producer" means a person or entity required to be licensed under the laws of this state to sell, <u>or</u> solicit or negotiate insurance, including annuities.
<b>I. Intermediary</b>	<b>"Intermediary" means an entity contracted with the insurance company to facilitate the sale of an annuity.</b>
ACLI	"Intermediary" means an entity contracted with the <del>insurance company</del> <u>insurer, or another intermediary,</u> to facilitate the sale of an annuity.
IRI	"Intermediary" means an entity <u>that: (1) is required to be licensed under the laws of this state to sell or solicit insurance, including annuities; and (2) has</u> contracted with <del>the</del> <u>an</u> insurance company to facilitate the sale of <del>an annuity</del> <u>the insurer's annuities by insurance producers.</u>
CA DOI	"Intermediary" means an entity contracted with the insurance company to facilitate <u>a producer's and/or insurer's</u> <del>the</del> sale of an annuity.
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<del>"Intermediary" means an entity contracted with the insurance company to facilitate the sale of an annuity.</del>
<b>J. Material conflict of interest</b>	<b>(1) "Material conflict of interest" means a financial interest of an insurance producer, or the insurer where no producer is involved, that a reasonable person would expect to affect the impartiality of the recommendation.</b>  <b>(2) "Material conflict of interest" includes financial incentives or rewards offered to or received by an insurance producer, or a direct</b>



	<b>interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer.</b>
<b>DOL – BICE Regulation</b>	<p><del>(1) “Material conflict of interest” means a financial interest of an insurance producer, or the insurer where no producer is involved, that a reasonable person would expect to affect the impartiality of the recommendation.</del></p> <p><del>(2) “Material conflict of interest” includes financial incentives or rewards offered to or received by an insurance producer, or a direct interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer. —</del>  <u>“Material conflict of interest” exists when [a producer] or [insurer] has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a fiduciary in rendering advice to a [consumer].</u></p>
<b>CAI</b>	<p>(1) “Material conflict of interest” means a financial interest of an insurance producer, or the insurer where no producer is involved, that a reasonable person would expect to affect the impartiality of the recommendation.</p> <p>(2) “Material conflict of interest” includes financial incentives or rewards offered to or received by an insurance producer, or a direct interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer <u>in connection with the recommendation.</u></p>
<b>IRI</b>	<p>(1) “Material conflict of interest” means a financial interest of an insurance producer, or the insurer where no producer is involved, that a reasonable person would expect to affect the impartiality of the recommendation.</p> <p>(2) <u>For purposes of this definition of “Material conflict of interest,” the phrase “a financial interest of an insurance producer or the insurer where no producer is involved”</u> includes financial incentives or rewards offered to or received by an insurance producer, or a direct interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer.</p>
<b>NAIFA</b>	<p><del>(1) “Material conflict of interest” means a financial interest of an insurance producer, or the insurer where no producer is involved, that a reasonable person would expect to affect the impartiality of the recommendation.</del> <u>The typical compensation received by an insurance producer in connection with the marketing and sale of an annuity does not, in and of itself, constitute a material conflict of interest.</u></p> <p><del>(2) “Material conflict of interest” includes financial incentives or rewards offered to or received by an insurance producer, or a direct interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer.</del>  <u>“Material conflict of interest” may include financial incentives or rewards, other than the typical compensation received by an insurance producer in connection with the marketing and sale of an annuity, offered to or received by an insurance producer, or a direct interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer, subject to the following <i>de minimus</i> exemptions: ...”</u></p>

<p><b>CA DOI</b></p>	<p>(1) “Material conflict of interest” means a financial interest of an insurance producer <u>and/</u>, or the insurer <del>where no producer is involved</del>, that a reasonable person would expect <del>to could</del> affect the <del>impartiality of the recommendation</del> <u>ability of the producer and/or insurer to: (a) exercise his/hers/its best judgment; and (b) put the consumer’s interests before the producer’s and/or insurer’s own interest.</u></p> <p>(2) “Material conflict of interest” includes financial incentives or rewards <u>available to</u>, offered to or received by an insurance producer, or a direct interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer. <u>It also includes non-cash compensation available to, offered to, or received as a result of meeting target sales levels.</u></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>(1) “Material conflict of interest” means a financial interest of an insurance producer, or the insurer where no producer is involved, that a reasonable person would expect to affect the impartiality of the recommendation.</del></p> <p><del>(2) “Material conflict of interest” includes financial incentives or rewards offered to or received by an insurance producer, or a direct interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer.——</del></p>
<p><b>K. Negotiate</b></p>	<p>“Negotiate” has the meaning stated in [insert reference to state law equivalent to Section 2K of the <i>Producer Licensing Model Act</i> (#218)].</p>
<p><b>ACLI; IRI</b></p>	<p><del>“Negotiate” has the meaning stated in [insert reference to state law equivalent to Section 2K of the <i>Producer Licensing Model Act</i> (#218)].</del></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>“Negotiate” has the meaning stated in [insert reference to state law equivalent to Section 2K of the <i>Producer Licensing Model Act</i> (#218)].</del></p>
<p><b>L. Non-cash compensation</b></p>	<p>“Non-cash compensation” means any form of compensation that is not cash compensation, including but not limited to, merchandise, gifts and prizes, travel expenses or meals and lodging.</p>
<p><b>ACLI</b></p>	<p>“Non-cash compensation” means any form of compensation that is not cash compensation, <u>received by an insurance producer from an insurer or an intermediary in connection with the recommendation of an annuity that is worth more than a de minimis amount</u>, including but not limited to, <u>entertainment</u>, merchandise, gifts and prizes, <u>trips</u>, travel expenses, <del>or</del> meals and lodging, <u>and marketing or</u></p>

	<u>advertising expenses.</u>
<b>IALC</b>	“Non-cash compensation” means any form of compensation that is not cash compensation <u>received in connection with the recommendation of an annuity</u> , including but not limited to, merchandise, gifts and prizes, travel expenses or meals and lodging.
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<del>“Non-cash compensation” means any form of compensation that is not cash compensation, including but not limited to, merchandise, gifts and prizes, travel expenses or meals and lodging.</del>
<b>M. Reasonable cash compensation</b>	“Reasonable cash compensation” means cash compensation that reflects the time and complexity of the product and the transaction involved and is not connected to volume of production.
<b>ACLI; IRI</b>	“Reasonable cash compensation” means cash compensation that <u>is not excessive, based on the facts and circumstances at the time of the recommendation. Relevant factors would include known compensation market ranges, and the complexity, features and benefits of the product. No single factor is dispositive in determining whether cash compensation is reasonable reflects the time and complexity of the product and the transaction involved and is not connected to volume of production.</u>
<b>IALC</b>	“Reasonable cash compensation” means cash compensation that <del>reflects the time and complexity of the product and the transaction involved and is not connected to volume of production</del> <u>is not excessive as measured by, inter alia, the market value of the annuity product transaction, the market pricing of services provided, the scope of any monitoring, and the complexity of the product. The reasonableness of compensation depends on the particular facts and circumstances at the time of the recommendation. No single factor is dispositive in determining whether compensation is reasonable.</u>
<b>NAIFA</b>	“Reasonable cash compensation” means cash compensation that reflects the time and complexity of the product and <del>the transaction involved and is not connected to volume of production</del> <u>the time spent by the producer in educating the consumer, providing advice to the consumer and in the marketing and sale of the product.</u>
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<del>“Reasonable cash compensation” means cash compensation that reflects the time and complexity of the product and the transaction involved and is not connected to volume of production.</del>

<b>N. Recommendation</b>	<p><b>“Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.</b></p>
<b>ACLI; IRI</b>	<p>“Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, <u>sale,</u> exchange or replacement of an annuity in accordance with that advice.</p> <p><u>“Recommendation” does not include general communications to the public, marketing and other product or sales materials, prospectuses, general education information and tools, and general customer service assistance or administrative support.</u></p>
<b>CAI</b>	<p>“Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.</p> <p><u>“Recommendation” does not include general education information and tools.</u></p>
<b>CA DOI</b>	<p>“Recommendation” means advice, <u>guidance, or information</u> provided by an insurance producer, or an insurer <del>where no producer is involved,</del> to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice, <u>guidance or information.</u></p>
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<p>“Recommendation” means <del>advice provided by an insurance producer, one or more statements or acts by a producer</del> or <u>by</u> an insurer where no producer is involved, to <del>an individual</del> a consumer that: <u>(1) reasonably may be interpreted by a consumer to be advice and that results in a purchase, exchange or replacement of an annuity</u> a consumer entering into or refraining from entering into a transaction in accordance with that advice; <u>or (2) is intended by the producer, or an insurer where no producer is involved, to result in a consumer entering into or refraining from entering into a transaction.</u></p>
<b>O. Replacement</b>	<p><b>“Replacement” means a transaction in which a new policy or contract 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 producer, that by reason of the transaction, an existing policy or contract has been or is to be:</b></p> <p><b>(1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;</b></p> <p><b>(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;</b></p> <p><b>(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</b></p>

	<p>which benefits would be paid;</p> <p>(4) Reissued with any reduction in cash value; or</p> <p>(5) Used in a financed purchase.</p> <p><b>Drafting Note:</b> The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.</p>
<p><b>CA DOI</b></p>	<p>“Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer <del>if there is no</del> <u>whether or not a</u> producer <u>is involved</u>, that by reason of the transaction, an existing policy or contract has been or is to be:</p> <p style="text-align: center;">*****</p>
<p><b>P. Suitability information</b></p>	<p><b>“Suitability information” means information that is reasonably appropriate to determine the recommendation is suitable and in the best interest of the consumer, including the following:</b></p> <p>(1) Age;</p> <p>(2) Annual income;</p> <p>(3) Financial situation and needs;</p> <p>(4) Financial experience;</p> <p>(5) Financial objectives;</p> <p>(6) Intended use of the annuity;</p> <p>(7) Financial time horizon;</p>

	<p><b>(8) Existing assets or financial products, including investment and life insurance holdings;</b></p> <p><b>(9) Liquidity needs;</b></p> <p><b>(10) Liquid net worth;</b></p> <p><b>(11) Risk tolerance, including changes in nonguaranteed elements in an annuity contract;</b></p> <p><b>(12) Financial resources used to fund the annuity; and</b></p> <p><b>(13) Tax status.</b></p>
<p><b>ACLI</b></p>	<p><del>“Suitability information”</del> <u>“Consumer profile information”</u> means information that is reasonably appropriate to determine the recommendation is suitable and in the best interest of the consumer, including the following:</p> <p style="text-align: center;">*****</p> <p>(11) Risk tolerance, <del>including changes in nonguaranteed elements in an annuity contract;</del></p> <p style="text-align: center;">*****</p>
<p><b>CAI</b></p>	<p>“Suitability information” means information that is reasonably appropriate to determine the recommendation is suitable and in the best interest of the consumer, including the following:</p> <p style="text-align: center;">*****</p> <p>(11) Risk tolerance, <del>including changes in nonguaranteed elements in an annuity contract;</del></p> <p style="text-align: center;">*****</p>
<p><b>IRI</b></p>	<p>“Suitability information” means information that is reasonably appropriate to determine the recommendation is suitable and in the best interest of the consumer, including the following:</p> <p style="text-align: center;">*****</p> <p>(8) Existing assets <del>or financial products</del>, including investment and life insurance holdings;</p> <p style="text-align: center;">*****</p> <p>(11) Risk tolerance, <del>including changes in nonguaranteed elements in an annuity contract;</del></p>

	*****
<b>NAIFA</b>	<p>“Suitability information” means information that is reasonably appropriate to determine the recommendation is suitable and in the best interest of the consumer, including the following:</p> <p style="text-align: center;">*****</p> <p><del>(3) Financial situation and needs;</del></p> <p style="text-align: center;">*****</p>
<b>CA DOI</b>	<p>“Suitability information” means information that is reasonably appropriate to determine <del>the</del><u>whether a</u> recommendation is suitable and in the best interest of the consumer, including the following:</p> <ul style="list-style-type: none"> <li>(1) Age;</li> <li>(2) Annual income;</li> <li>(3) Financial situation and needs;</li> <li>(4) Financial experience;</li> <li>(5) Financial objectives;</li> <li>(6) Intended use of the annuity;</li> <li>(7) Financial time horizon;</li> <li>(8) Existing assets <del>or</del><u>and</u> financial products, including investment and life insurance holdings;</li> <li>(9) Liquidity needs;</li> <li>(10) Liquid net worth;</li> <li>(11) Risk tolerance, including changes in nonguaranteed elements in an annuity contract;</li> </ul>

	<p>(12) Financial resources used to fund the annuity; <del>and</del></p> <p>(13) Tax status;</p> <p><u>(14) Whether or not the consumer has a reverse mortgage; and</u></p> <p><u>(15) Whether or not the consumer intends to apply for means tested government benefits, including, but not limited to, Medicaid or the veterans' aid and attendance benefit.</u></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p>“Suitability information” means information that is reasonably appropriate to determine the recommendation is suitable and in the best interest of the consumer, including the following:</p> <p>(1) Age;</p> <p>(2) Annual income;</p> <p>(3) Financial situation and needs, <u>including the financial resources used for the funding of the policy;</u></p> <p>(4) Financial experience;</p> <p>(5) Financial objectives;</p> <p>(6) Intended use of the <del>annuity</del>, <u>including any riders attached thereto;</u></p> <p>(7) Financial time horizon, <u>including the duration of existing liabilities and obligations;</u></p> <p>(8) Existing assets or financial products, including investment and <del>life</del>-insurance holdings;</p> <p>(9) Liquidity needs;</p> <p>(10) Liquid net worth;</p> <p>(11) Risk tolerance, <del>including changes in nonguaranteed elements in an annuity contract;</del></p> <p>(12) <del>Financial resources used to fund the annuity</del> <u>Tolerance of non-guaranteed elements in a policy, including variability in premium,</u></p>



	<u>cash value, death benefit or fees</u> ; and  (13) Tax status.
<b>Additional Suggested Definitions</b>	
<b>DOL – BICE Regulation</b>	<u>“Proprietary products” means a product that is managed, issued or sponsored by [an insurer] or any of its affiliates</u>
<b>IRI</b>	<u>P. “Third-party producer” means a producer representing an insurer on an independent contractor basis and not as an employee of the insurer or an entity controlled by, controlling or under common control with the insurer.</u>
<b>Jackson</b>	<u>“Specified fiduciary” means an entity acting, registered, and regulated under a fiduciary standard of care as: (1) a bank; (2) a trust company; or (3) an investment adviser under the Investment Advisers Act of 1940 or equivalent state law, and a person acting as an associated person of a specified fiduciary.</u>
<b>CA DOI</b>	<u>“Concession” means ?</u>
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<u>“Consumer” means the owner or prospective owner of a policy.</u>  <u>“Policy” means a life insurance policy, annuity contract, or a certificate issued by a fraternal benefit society or under a group life insurance policy or group annuity contract.</u>  <u>“Suitable” means in the furtherance of a consumer’s needs and objectives under the circumstances then prevailing based upon the suitability information provided by the consumer and all available products, services and transactions.</u>  <u>“Transaction” means any purchase, replacement, modification or election of a contractual provision with respect to a proposed or in-force policy.</u>
<b>Section 6. Duties of Insurers and of Insurance Producers</b>	
<b>A. 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 only make a recommendation that is suitable and in the best interest of the consumer at the time it is made based on the facts disclosed by the consumer as to his or her investments and other insurance products</b>	

<b>and as to his or her financial situation and needs, including the consumer’s suitability information.</b>	
<b>DOL – BICE Regulation Impartial Conduct Standards (Section II(c)(1))</b>	<p><del>A. 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 only make a recommendation that is suitable and in the best interest of the consumer at the time it is made based on 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.</del></p> <p><u>When providing advice to the [consumer], the [insurer] and the [producer] provide investment advice that is, at the time the recommendation, in the best interest of the [consumer]. [As further defined in Section VIII(d),] such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and the needs of the [consumer], without regard to the financial or other interests of the [producer], [insurer] or other party. The recommended transaction will not cause the [insurer] or [producer] to receive directly or indirectly, compensation for their services that is excess of reasonable compensation [within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2)]. Statements by the [insurer] and its [producers] to the [consumer] about the recommended transaction, fees and compensation, material conflicts of interest, and any other matters relevant to a [consumer’s] investment decisions, will not be materially misleading at the time they were made.</u></p>
<b>ACLI</b>	<p>A. 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 only make a recommendation that <u>the insurance producer, or the insurer where no producer is involved, has reasonable grounds to believe is suitable and</u> in the best interest of the consumer at the time <del>it</del><u>the recommendation</u> is made based on the <del>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</del><u>consumer profile information</u>.</p>
<b>IRI</b>	<p>A. 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 only make a recommendation <del>that</del><u>if the insurance producer, or the insurer where no producer is involved, has reasonable grounds to believe the recommendation</u> is suitable and in the best interest of the consumer at the time it is made based on 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.</p>
<b>NAIFA</b>	<p>A. 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 only make a</p>

	<p>recommendation that is <del>suitable and</del> in the best interest of the consumer at the time it is made based on the <del>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</del> <u>suitability information provided by the consumer.</u></p>
<p><b>CA DOI</b></p>	<p>A. 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 <del>where no producer is involved</del>, shall <del>make</del> <u>make</u> only <del>make</del> a recommendation that is suitable and in the best interest of the consumer at the time it is made based on 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, <u>and other relevant information about the consumer about which the insurance producer or insurer may become aware.</u></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p>A. In recommending <u>a transaction</u> to a consumer <del>the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions</del>, the insurance producer, or the insurer where no producer is involved, shall <del>only make a recommendation that is suitable and in the best interest of the consumer at the time it is made based on 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</del> <u>act in the best interest of the consumer.</u></p> <p><u>B. The producer, or insurer where no producer is involved, acts in the best interest of the consumer when;</u></p> <p><u>(1) The producer's or insurer's recommendations to the consumer are based on an evaluation of the suitability information of the consumer that reflects the care, skill, prudence and diligence that a prudent person familiar with such matters would use under the circumstances without regard to financial or other interests of the producer, insurer or any other third party;</u></p> <p><u>(2) The transaction is suitable;</u></p> <p><u>(3) There is reasonable basis to believe:</u></p> <p><u>(4)(a) The consumer has been reasonably informed of various features of the <del>annuity policy and potential consequences of the transaction, whether favorable or unfavorable</del>, such as the potential surrender period and surrender charge, <del>any secondary guarantee period, equity index features, availability of cash value,</del> potential tax <del>penalty implications</del> if the consumer sells, <del>modifies, exchanges, surrenders, lapses</del> or annuitizes the <del>annuity policy, death benefit,</del> mortality and expense fees, <del>cost of insurance charges,</del> investment advisory fees, <del>policy exclusions or restrictions,</del> potential charges for and features of riders, limitations on interest returns, <del>guaranteed interest rates,</del> insurance and investment components, <del>and</del> market risk, <del>and the manner in which the producer is compensated for the sale and servicing of the policy in accordance with Part 30 of this Title (Insurance Regulation 194) and Insurance Law section 2119;</del></u></p> <p><b>Drafting Note:</b> If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in</p>

	<p>paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</p> <p><del>(2)(b)</del> The consumer would benefit from certain features of the <u>annuity policy</u>, such as tax-deferred growth, annuitization or death or living benefit;</p> <p><del>(3)(c)</del> The particular <u>annuity policy</u> as a whole, the underlying subaccounts to which funds are allocated at the time of <del>purchase or exchange of the annuity</del><u>the transaction</u>, and riders and similar product enhancements, if any, are suitable <del>and in the best interest of the consumer (and in the case of an exchange or replacement, the transaction as a whole is suitable and in the best interest of the consumer)</del> for the particular consumer based on <del>his or her</del><u>the consumer's</u> suitability information; and</p> <p><del>(4)(d)</del> In the case of <del>an exchange or a</del> replacement of <del>an annuity a</del> <u>policy</u>, the <del>exchange or</del> replacement is suitable <del>and in the best interest of the consumer</del>, including taking into consideration whether: <del>(a)(i)</del> The consumer will incur a surrender charge, <u>increased premium or fees, decreased coverage duration, decreased death benefit or income amount, adverse change in health rating</u>, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), <u>be subject to tax implications if the consumer surrenders or borrows from the policy</u>, or be subject to increased fees, investment advisory fees, <u>premium loads</u> or charges for riders and similar product enhancements; <del>(b)(ii)</del> The consumer would benefit from <del>product</del><u>policy</u> enhancements and improvements <del>and the replacing product would provide a substantial financial benefit to the consumer over the life of the product, such as decreased premium or fees, increased coverage duration, increased death benefit or income amount</del>; and <del>(c)(iii)</del> The consumer has had another <del>annuity exchange or policy</del> replacement and, in particular, <del>an exchange or a</del> replacement within the preceding <del>60</del><u>36</u> months.</p>
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**B. Prior to the recommendation of an annuity, an insurance producer, or an insurer where no producer is involved, shall do all of the following:**

- (1) Make reasonable efforts to obtain the consumer's suitability information;**
- (2) Evaluate the types of financial products which correspond to the consumer's disclosed suitability information and address the consumer's financial objectives; and**
- (3) Disclose to the consumer any limitations the producer or the insurer has in regard to the following: (a) The type of financial products that can be provided; (b) Whether only specific insurer company products or a limited range of annuity products can be offered; (c) The scope of services provided; and (d) The scope of the producer's licenses.**

<p><b>DOL – BICE Regulation</b> <i>Impartial Conduct Standards (Section II(e))</i></p>	<p>See language in Subsection C.</p>
<p><b>ACLI</b></p>	<p>B. Prior to the recommendation of an annuity, an insurance producer, or an insurer where no producer is involved, shall do all of the following:</p> <p>(1) Make reasonable efforts to obtain the <del>consumer’s suitability information</del> <u>consumer profile information</u>;</p> <p>(2) <del>Evaluate</del> <u>Consider</u> the types of <u>insurance and</u> financial products <u>that the insurance producer, or an insurer where no producer is involved, is authorized to recommend or sell when reviewing the consumer’s insurance needs and financial objectives which correspond to the consumer’s</u> disclosed <u>by the consumer in the suitability information, consumer profile information and address the consumer’s financial objectives</u>; and</p> <p>(3) Disclose to the consumer <del>any limitations the producer or the insurer has in regard to</del> the following: (a) The types of <u>insurance and</u> financial products that can be provided; (b) Whether only specific insurer <del>company proprietary products</del> or a limited range of annuity products can be offered; (c) The scope of services provided; and (d) The scope of the producer’s licenses.</p>
<p><b>IRI</b></p>	<p>B. Prior to the recommendation of an annuity, an insurance producer, or an insurer where no producer is involved, shall do all of the following:</p> <p>(1) Make reasonable efforts to obtain the consumer’s suitability information <u>from the consumer</u>;</p> <p>(2) Evaluate <del>the types of financial products which correspond to</del> <u>whether an annuity in general, and the annuity product being recommended in particular, would be appropriate in light of</u> the consumer’s disclosed suitability information, <u>including whether the annuity being recommended would be consistent with and address</u> the consumer’s financial objectives; and</p> <p>(3) Disclose to the consumer any limitations the producer or the insurer has in regard to the following: (a) The type of financial products that can be provided; (b) Whether only specific insurer company products or a limited range of annuity products can be offered; (c) The scope of services provided; and (d) The scope of the producer’s licenses.</p>
<p><b>Michigan Department</b></p>	<p>B. Prior to the recommendation of an annuity, an insurance producer, or an insurer where no producer is involved, shall do all of the</p>

<p><b>of Insurance and Financial Services (MI DIFS)</b></p>	<p>following:</p> <p style="text-align: center;">*****</p> <p>(2) Evaluate <u>and document</u> the types of financial products which correspond to the consumer’s disclosed suitability information and address the consumer’s financial objectives; and</p> <p style="text-align: center;">*****</p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>BC. Prior to the recommendation of <u>an annuity transaction</u>, an insurance producer, or an insurer where no producer is involved, shall do all of the following:</del></p> <p><del>(1) <u>Make</u> reasonable efforts to obtain the consumer’s suitability information;</del></p> <p><del>(2) Evaluate the types of financial products which correspond to the consumer’s disclosed suitability information and address the consumer’s financial objectives; and</del></p> <p><del>(3) Disclose to the consumer any limitations the producer or the insurer has in regard to the following: (a) The type of financial products that can be provided;</del></p> <p><del>(b) Whether only specific insurer company products or a limited range of annuity products can be offered; (c) The scope of services provided; and (d) The scope of the producer’s licenses.</del></p>
<p><b>C. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</b></p> <p><b>(1) Any and all material conflicts of interest;</b></p> <p><b>(2) The percentage or amount of cash compensation above three (3) percent, whether by commission or fee, the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity; and</b></p> <p><b>(3) The basis or bases of the recommendation.</b></p>	
<p><b>DOL – BICE Regulation Impartial Conduct</b></p>	<p><del>C. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</del></p>

<p><b>Standards (Section II(e))</b></p>	<p><del>(1) Any and all material conflicts of interest;</del></p> <p><del>(2) The percentage or amount of cash compensation above three (3) percent, whether by commission or fee, the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity; and</del></p> <p><del>(3) The basis or bases of the recommendation.</del></p> <p><u>In the Best Interest Contract or in a separate single written disclosure provided to the [consumer] with the contract prior to or at the same time as the execution of the recommended transaction, the [insurer] clearly and prominently: (1) states the Best Interest standard of care owed by the [producer] and the [insurer] to the [consumer]; informs the [consumer] of the services provided by the [insurer] and the [producer]; and describes how the [consumer] will pay for services, directly or through Third Party payments. If, for example, the [consumer] will pay through commissions or other forms of transaction-based payments, the contract or writing must clearly disclose that fact; (2) describes material conflicts of interest; discloses any fees or charges the [insurer] or the [producer] imposes on the [consumer] or the [consumer’s] account; and states the types of compensation that the [insurer] and the [producer] expect to receive from their parties in connection with investments recommended to [consumers]; (3) informs the [consumer] that the [consumer] has the right to obtain copies of the [insurer’s] written description of its policies and procedures [adopted in accordance with Section II(d)], as well as the specific disclosure of costs, fees, and compensation, including Third Party payments, regarding recommended transactions, [as set forth in Section III(a), below], described in dollar amounts, percentages, formulas, or other means reasonably designed to present materially accurate disclosure of their scope, magnitude, and nature in sufficient detail to permit the [consumer] to make an informed judgment about the costs of the transaction and about the significance and severity of the material conflicts of interest, and describes how the [consumer] can get the information, free of charge [...]; (5) discloses to the [consumer] whether the [insurer] offers Proprietary Products or receives Third Party Payments with respect to any recommended investments; and to the extent the [insurer] or [producer] limits investment recommendations, in whole or in part, to Proprietary Products or investments that generate Third Party Payments, notifies the [consumer] of the limitations placed on the universe of investments that the [producer] may offer for purchase, sale, exchange or holding by the [consumer]. The notice is insufficient if it merely states that the [insurer] or [producer] “may” limit investment recommendations based on whether the investments are Proprietary Products or generate Third Party Payments, without specific disclosure of the extent to which recommendations are, in fact, limited on that basis.</u></p>
<p><b>ACLI</b></p>	<p>C. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</p> <p><del>(1) Any and all material conflicts of interest;</del></p> <p><del>(2) The percentage or amount of cash compensation above three (3) percent, whether by commission or fee, the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity; and</del></p> <p><del>(a) A description of the cash compensation the producer will receive from the insurer, intermediary or directly from the consumer, as a</del></p>

	<p><u>result of the annuity recommendation; (b) That the cash compensation received by the producer may vary depending on a number of factors; (c) That the consumer can obtain additional information about the cash compensation expected to be received by the producer as a result of the recommendation by requesting such information from the producer; (d) If the consumer requests such additional information about the producer's cash compensation prior to the issuance of the annuity, the producer shall disclose the requested information at or prior to the issuance of the annuity which may, if requested, include the use of percentages, dollar amounts, ranges, or estimates;</u></p> <p><u>(3) A description of the types of non-cash compensation the insurance producer would receive or be eligible for from the insurer whose product is recommended or an intermediary as a result of the annuity recommendation.</u></p> <p><u>(3)(4) The basis or bases of the recommendation. How the recommendation will further the consumer's insurance needs and financial objectives.</u></p>
<p><b>CAI</b></p>	<p>C. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</p> <p>(1) Any and all material conflicts of interest;</p> <p><del>(2) The percentage or amount of cash compensation above three (3) percent, whether by commission or fee, the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity; and</del></p> <p><u>(2) For a commission-based annuity: "You should be aware that I am paid a commission by the insurance company related to the sale of an annuity to you. The rate of my commission varies by company and by the type of annuity that you purchase. If you would like additional information on the commissions I receive, please feel free to ask additional questions to better understand my financial incentives."</u></p> <p><del>(3) The basis or bases of the recommendation.</del></p>
<p><b>IRI</b></p>	<p>C. <del>At, or prior to, the time of in making</del> a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</p> <p>(1) Any and all material conflicts of interest;</p> <p><del>(2) The percentage or amount of cash compensation above three (3) percent, whether by commission or fee, the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity; and</del><u>(a) a description of the role of the insurance producer in the transaction; (b) a description of the cash compensation the producer will receive from the selling insurer, intermediary or other third party based in whole or in part on the annuity product being recommended; (c) that the cash</u></p>



	<p><u>compensation paid to the insurance producer may vary depending on a number of factors, including (if applicable) the annuity contract and insurance selected by the consumer, the volume of business the insurance producer does with the insurance company or the profitability of the insurance company’s products sold by the insurance producer; (d) a description of the types of non-cash compensation the producer may receive or be eligible to receive from the selling insurer, intermediary or other third party based in whole or in part on the annuity product being recommended; and (e) that the purchaser may obtain information about the compensation expected to be received by the insurance producer based in whole or in part on the recommendation, and the compensation expected to be received based in whole or in part on any alternative quotes presented by the insurance producer, by requesting such information from the insurance producer.</u></p> <p>(3) The basis or bases of the recommendation.</p>
<p><b>NAIFA</b></p>	<p>C. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</p> <p>(1) Any and all material conflicts of interest;</p> <p><del>(2) The percentage or amount of cash compensation above three (3) percent, whether by commission or fee, the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity; and</del></p> <p style="text-align: center;"><b>OR</b></p> <p>(2) The percentage or amount of cash compensation above <del>three (3)</del><u>six (6)</u> percent, whether by commission or fee, the insurance producer would receive <u>in the first year</u> as a result of a contract for services for advice or for the sale of a recommended annuity; and</p> <p>(3) The basis or bases of the recommendation.</p>
<p><b>CA DOI</b></p>	<p>C. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</p> <p>(1) Any and all material conflicts of interest, <u>including that the producer will receive a commission or fee for the sale of the annuity; the amount of the commission or fee and, if applicable, all other compensation the insurance producer will receive as a result of a contract for services for advice or for the sale of the annuity to the consumer. This disclosure shall be made verbally and in a separate standalone document that is no more than two pages in length and is written in plain language in 14 point font that is left with the consumer when the application is signed; and</u></p> <p><del>(2) The percentage or amount of cash compensation above three (3) percent, whether by commission or fee, the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity; and</del></p> <p><del>(3)</del><u>(2) The basis or bases of the recommendation. This disclosure shall be made verbally and in a separate standalone document that is</u></p>

	<p><u>no more than two pages in length and is written in plain language in 14 point font that is left with the consumer when the application is signed.</u></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>C. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</del></p> <p><del>(1) Any and all material conflicts of interest;</del></p> <p><del>(2) The percentage or amount of cash compensation above three (3) percent, whether by commission or fee, the insurance producer would receive as a result of a contract for services for advice or for the sale of a recommended annuity; and</del></p> <p><del>(3) The basis or bases of the recommendation.</del></p>
<p><b>D. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall have a reasonable basis to believe all of the following:</b></p> <p><b>(1) 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, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;</b></p> <p><b>Drafting Note:</b> If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</p> <p><b>(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;</b></p> <p><b>(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 best interest of the consumer (and in the case of an exchange or replacement, the transaction as a whole is suitable and in the best interest of the consumer) for the particular consumer based on his or her suitability information; and</b></p> <p><b>(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable and in the best interest of the consumer including taking into consideration whether: (a) 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; (b) The consumer would benefit from product enhancements and improvements and the replacing product would provide a substantial financial benefit to the consumer over the life of the product; and (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.</b></p>	

<p><b>DOL – BICE Regulation Impartial Conduct Standards (Section II(e))</b></p>	<p><b>See Language in Subsection C.</b></p>
<p><b>ACLI</b></p>	<p>(1) 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, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk <u>and the potential for changes in the nonguaranteed elements</u>;</p> <p><b>Drafting Note:</b> If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</p> <p>(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;</p> <p>(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 <del>suitable and</del> in the best interest of the consumer (and in the case of an exchange or replacement, the transaction as a whole is <del>suitable and</del> in the best interest of the consumer) for the particular consumer based on his or her <del>suitability information</del><u>consumer profile information</u>; and</p> <p>(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is <del>suitable and</del> in the best interest of the consumer including taking into consideration whether: (a) 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; (b) The consumer would benefit <del>from product enhancements and improvements and the replacing product would provide a substantial financial benefit to the consumer over the life of the product</del> <u>more over the life of the replacing annuity than the annuity being replaced based on factors such as product enhancements and improvements, the level of benefits or payment terms or product fees and charges</u>; and (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.</p>
<p><b>IRI</b></p>	<p>D. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall have a reasonable basis to believe all of the following:</p> <p>(1) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and</p>

	<p>surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, <u>potential changes in nonguaranteed elements of an annuity</u>, insurance and investment components and market risk;</p> <p><b>Drafting Note:</b> If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</p> <p style="text-align: center;">*****</p> <p>(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable and in the best interest of the consumer including taking into consideration whether: (a) 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; (b) The consumer would benefit from product enhancements and improvements <del>and the replacing product would provide a substantial financial benefit to the consumer over the life of the product</del>; and (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding <del>60</del><u>36</u> months.</p>
CA DOI	<p style="text-align: center;">*****</p> <p>(2) The consumer would <del>benefit from certain features of the annuity, such as tax deferred growth, annuitization or death or living benefit</del> <u>receive a tangible net benefit from the transaction</u>;</p> <p style="text-align: center;">*****</p> <p>(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable and in the best interest of the consumer including taking into consideration whether: (a) 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; <del>;(b) The consumer would benefit from product enhancements and improvements and the replacing product would provide a substantial financial benefit to the consumer over the life of the product;</del> <u>;(b) The consumer would benefit from product enhancements and improvements and the replacing product <del>would</del><u>provides</u> a substantial financial benefit to the consumer over the life of the product;</u> <del>and</del> <u>;(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months; and</u> <del>;(d) a comparison of the annuity to be replaced with the replacing annuity to determine whether going ahead with the transaction is in the consumer's best interest, which is documented.</del></p>
NYS DFS – Based on Proposed Rule	<p><b>NOTE THIS LANGUAGE IS REFLECTED IN THE REVISIONS TO SUBSECTION A.</b></p> <p><del>D. (1) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and</del></p>

<b>Provisions</b>	<p><del>surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;</del></p> <p><del><b>Drafting Note:</b> If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</del></p> <p><del>(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;</del></p> <p><del>(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 best interest of the consumer (and in the case of an exchange or replacement, the transaction as a whole is suitable and in the best interest of the consumer) for the particular consumer based on his or her suitability information; and</del></p> <p><del>(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable and in the best interest of the consumer including taking into consideration whether: (a) 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; (b) The consumer would benefit from product enhancements and improvements and the replacing product would provide a substantial financial benefit to the consumer over the life of the product; and (c) ——— The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.</del></p>
	<b>E. Except as permitted under subsection F, 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>
<b>DOL – BICE Regulation</b>	<b>N/A – no specific equivalent language</b>
<b>ACLI</b>	E. Except as permitted under subsection F, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity <del>is suitable</del> <u>furthers the consumer’s insurance needs and financial objectives</u> based on the <del>consumer’s suitability information</del> <u>consumer profile information</u> .
<b>NYS DFS – Based on Proposed Rule</b>	E. <del>Except as permitted under subsection F</del> <u>In addition to the requirements of subsections A and B</u> , an insurer shall not issue <del>an annuity or modify a policy</del> recommended to a consumer unless there is a reasonable basis to believe <u>that</u> the <del>annuity policy</del> <u>is suitable based on</u>

<b>Provisions</b>	the consumer’s suitability information.
	<p><b>F. An insurer is not obligated to determine an annuity is suitable, but instead, shall determine the annuity is reasonable prior to issuance based on the circumstances actually known to the insurer at the time the annuity is issued if any of the following situations occur:</b></p> <p><b>(1) The producer makes no recommendation;</b></p> <p><b>(2) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</b></p> <p><b>(3) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</b></p> <p><b>(4) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.</b></p>
<b>DOL – BICE Regulation</b>	<b>N/A – no specific equivalent language</b>
<b>ACLI</b>	<p><del>F. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer nor an insurer shall have any obligation to a consumer under subsection A or E of this section related to any annuity transaction. An insurer is not obligated to determine an annuity is suitable, but instead, shall determine the annuity is reasonable prior to issuance based on the circumstances actually known to the insurer at the time the annuity is issued.</del> if any of the following situations occur:</p> <p><del>(1)(a) Neither the</del>The producer <del>nor the insurer</del> makes <del>no</del> recommendation;</p> <p><del>(2)(b)</del> A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p> <p><del>(3)(c)</del> A consumer refuses to provide relevant <del>suitability information</del><u>consumer profile information</u> and the annuity transaction is not recommended; or</p> <p><del>(4)(d)</del> A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.</p> <p><u>(2) An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.</u></p>

<p><b>IRI</b></p>	<p>F. <del>(1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if an insurer is not obligated to determine an annuity is suitable, but instead, shall determine the annuity is reasonable prior to issuance based on the circumstances actually known to the insurer at the time the annuity is issued if any of the following situations occur:</del></p> <p><del>(1)(a)</del> The producer makes no recommendation;</p> <p><del>(2)(b)</del> A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p> <p><del>(3)(c)</del> A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</p> <p><del>(4)(d)</del> A consumer decides to enter into an annuity transaction that is not based on <u>or conflicts with</u>, a recommendation of the insurer or the insurance producer.</p> <p><u>(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.</u></p>
<p><b>NAIFA</b></p>	<p>F. <del>An insurer is not obligated to determine an annuity is suitable, but instead, shall determine the annuity is reasonable prior to issuance based on the circumstances actually known to the insurer at the time the annuity is issued. Neither an insurer nor a producer shall have any obligations to determine if an annuity is appropriate for, reasonable, suitable, or in the best interest of the consumer if any of the following situations occur:</del></p> <p style="text-align: center;">*****</p>
<p><b>CA DOI</b></p>	<p>F. <del>(1)</del> An insurer is not obligated to determine an annuity is suitable, but instead, shall determine the annuity is reasonable prior to issuance based on the circumstances actually known to the insurer at the time the annuity is issued if any of the following situations occur:</p> <p><del>(1)(a)</del> The producer makes no recommendation;</p> <p><del>(2)(b)</del> A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p>

	<p><del>(3)(c)</del> A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</p> <p><del>(4)(d)</del> A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.</p> <p><u>(2) (a) If any of the situations set forth in paragraphs (1)(a); (c); or (d) occur, prior to issuing the annuity, the insurer shall send the consumer a product suitability form with a cover letter that states that in order to ensure that the consumer is purchasing an annuity which is in the consumer’s best interest, the insurer is requesting the consumer’s suitability information. If the consumer refuses to complete the suitability form, the consumer must write on the form: “I refuse to complete this questionnaire and want to purchase the annuity which was not recommended by the insurance agent.”</u></p> <p><u>(b) The insurer is prohibited from issuing the annuity until it receives a response to its mailing from the consumer.</u></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>FE. (1) Except as provided in paragraph (2), A neither a producer nor an insurer is not obligated to determine an annuity is suitable, but instead, shall determine the annuity is reasonable prior to issuance based on the circumstances actually known to the insurer at the time the annuity is issued shall have any obligation to a consumer under subsection A, B or D if any of the following situations occur:</del></p> <p><del>(1)(a) The producer makes nNo recommendation is made;</del></p> <p><del>(2)(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</del></p> <p><del>(3)(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</del></p> <p><del>(4)(d) A consumer decides to enter into an annuity a transaction that is not based on a recommendation of the insurer or the insurance producer.</del></p> <p><u>(2) An insurer shall not enter into a transaction subject to paragraph (1) unless the transaction is suitable based on the information actually known to the insurer at the time of the transaction.</u></p>



<p><b>G. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:</b></p> <p><b>(1) Make a record of any recommendation and the basis or bases of the recommendation subject to this regulation;</b></p> <p><b>(2) Obtain a customer signed statement documenting a customer’s refusal to provide suitability information, if any; and</b></p> <p><b>(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.</b></p>	
<b>DOL – BICE Regulation</b>	N/A – no specific equivalent language
<b>ACLI</b>	<p>G. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of <del>sale</del> <u>recommendation</u>:</p> <p>(1) Make a record of any recommendation and the basis or bases of <u>how</u> the recommendation <u>will further the consumer’s insurance needs and financial objectives</u> subject to this regulation;</p> <p>(2) Obtain a customer signed statement documenting a customer’s refusal to provide <del>suitability information</del> <u>consumer profile information</u>, if any; and</p> <p>(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 <del>insurance producer’s or insurer’s</del> recommendation <u>of the insurance producer, or insurer, where no insurance producer is involved</u>.</p>
<b>CA DOI</b>	<p>G. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:</p> <p>(1) Make a record of any recommendation and the basis or bases of the recommendation subject to this regulation;</p> <p>(2) Obtain a customer signed statement documenting a customer’s refusal to provide suitability information, if any; and</p> <p>(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. <u>If any of the situations set forth in paragraphs (2) or (3) occur, prior to issuing the annuity, the insurer shall send the consumer a product suitability form with a cover letter that states that in order to ensure that the consumer is purchasing an annuity which is in the consumer’s best interest, the insurer is requesting the consumer’s suitability information. If the consumer refuses to complete the suitability form, the consumer</u></p>

	<p><u>must write on the form: "I refuse to complete this questionnaire and want to purchase the annuity which was not recommended by the insurance agent." The insurer is prohibited from issuing the annuity until it receives a response to its mailing from the consumer.</u></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>G</del>F. An insurance producer or, <u>an insurer</u> where no insurance producer is involved, <del>the responsible insurer representative</del>, shall at the time of <u>sale recommendation</u>:</p> <p><u>(1) Disclose to the consumer all relevant suitability considerations and product information, whether favorable or unfavorable, that provide the basis for any recommendation;</u></p> <p><del>(1)(2) Make a record of</del><u>Document</u> any recommendation <del>and the basis or bases of the recommendation</del> subject to <u>subsection A and B</u> this regulation;</p> <p><del>(3) (2) Obtain a customer signed statement documenting a</del><u>Document the</u> customer's refusal to provide suitability information, if any; and</p> <p><del>(3)(4) Obtain a customer signed statement acknowledging that an annuity</del><u>Document that a</u> transaction is not recommended if a customer decides to enter into <u>an annuity</u> transaction that is not based on the insurance producer's or insurer's recommendation.</p> <p><u>G. A producer shall not make a recommendation to a consumer to enter into a transaction unless the producer has a reasonable basis to believe that the consumer has the financial ability to meet the financial commitment under the policy.</u></p>
	<p><b>H. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following: (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals; (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 9 of this regulation; (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers; (d) The insurer shall maintain procedures for 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 and in the best interest of a consumer. 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; (e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable and are not in the best interest of the consumer. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph</b></p>

<p>prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and (f) The insurer shall annually provide a 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.</p> <p>(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 10 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer’s compliance with subparagraph (b) of this paragraph.</p> <p>(b) An insurer’s supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) 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.</p> <p>(3) An insurer is not required to include in its system of supervision an insurance producer’s recommendations to consumers of products other than the annuities offered by the insurer.</p>	
DOL – BICE Regulation	N/A – no specific equivalent language
ACLI	<p>H. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s and <del>its</del> insurance <del>producers’</del> <u>producers authorized to recommend the insurer’s annuity products’</u> compliance with this regulation, including, but not limited to, the following: (a) The insurer shall maintain reasonable procedures to inform <del>its</del> insurance producers <u>authorized to recommend the insurer’s products</u> of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals; (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require <del>its</del> insurance producers <u>authorized to recommend the insurer’s products</u> to comply with the requirements of section 98 of this regulation; (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to <del>its</del> insurance producers <u>authorized to recommend the insurer’s products</u>; (d) The insurer shall maintain procedures for review of each recommendation <u>of its annuity products</u> prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation <del>is suitable and in the best interest of a consumer</del> <u>further the consumer’s insurance needs and financial objectives</u>. 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; (e) The insurer shall maintain reasonable procedures to detect recommendations <u>of its annuity products</u> that <del>are not suitable and are not in the best interest of the consumer</del> <u>do not further</u></p>

	<p><u>the consumer's insurance needs and financial objectives</u>. This may include, but is not limited to, confirmation of <del>consumer suitability information</del><u>consumer profile information</u>, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming <del>suitability information</del><u>consumer profile information</u> after issuance or delivery of the annuity; <u>(f) The insurance shall make reasonable efforts to address a situation for which there is a clear indication that a producer failed to act with reasonable diligence, care, skill and prudence, or failed to place the consumer's interest above the producer's financial interest;</u> and <del>(g)</del> The insurer shall annually provide a 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.</p> <p>(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section <del>409</del> of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.</p> <p>(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) 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.</p> <p>(3) An insurer is not required to <u>consider or have knowledge of other insurers' annuity products that an insurance producer could have recommended to a consumer nor</u> include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer <u>that the producer is authorized to recommend</u>.</p> <p><u>(4) Notwithstanding any Material Conflict of Interest that may be presented by compensation payable by an insurer to the insurance producer, or other Material Conflicts of Interest or other information that would reasonably be known to the insurer, an insurer is not required to: (a) confirm the adequacy, or nature, of an insurance producer's disclosure of producer's Material Conflicts of Interest required by Section 6.C (1); or (b) validate, or otherwise reasonably determine, the accuracy of an insurance producer's other disclosures required by Section 6.B. and Section 6.C.</u></p>
IALC	<p style="text-align: center;">*****</p> <p>(3) An insurer is not required to <u>consider or have knowledge of other insurers' annuity products that an insurance producer could have recommended to a consumer nor</u> include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer <u>that the insurance producer is authorized to recommend</u>.</p>

<p><b>IRI</b></p>	<p>H. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s and its insurance producers’ compliance with this regulation, including, but not limited to, the following: (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals; (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 98 of this regulation; (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers; (d) The insurer shall maintain procedures for 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 <del>and in the best interest of a consumer</del>. 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; (e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable and are not in the best interest of the consumer. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; <u>(f) Notwithstanding anything to the contrary in this regulation, an insurer will be deemed to have satisfied its obligation under this subsection, and be in compliance with this regulation for purposes of section 9 of this regulation, with respect to recommendations of the insurer’s annuity products by a third-party producer if, prior to issuance of the recommended annuity product, the insurer obtains from the third-party producer a written description of the basis for his or her determination that the recommendation is suitable and in the client’s best interest, unless the insurer knows of any reason to dispute the third-party producer’s best interest determination;</u> and <del>(f)(g)</del> The insurer shall annually provide a 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.</p> <p style="text-align: center;">*****</p>
<p><b>MI DIFS</b></p>	<p>H. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s, <del>and</del> <u>and intermediaries,</u> compliance with this regulation, including, but not limited to, the following:</p> <p style="text-align: center;">*****</p>
<p><b>CA DOI</b></p>	<p style="text-align: center;">*****</p> <p>(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of</p>

	<p>procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 10 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph. <u>An insurer is responsible for the compliance of its insurance producer with the provisions of this article regardless of whether the insurer contracts for performance of a function required under this [subdivision] and regardless of the insurer's compliance with [subparagraph of this paragraph].</u></p> <p>(b) An insurer's supervision system under paragraph (1) shall include <u>reasonable</u> supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) <u>Reasonable</u> <del>Mm</del> monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) 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.</p> <p style="text-align: center;">*****</p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>H. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following: (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals; (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 9 of this regulation; (c) The insurer shall provide product specific training and training materials which explain all material features of its annuity products to its insurance producers; (d) The insurer shall maintain procedures for 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 and in the best interest of a consumer. 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; (e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable and are not in the best interest of the consumer. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and (f) The insurer shall annually provide a 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.</del></p> <p><del>(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 10 of this regulation regardless of whether the insurer contracts for performance of a</del></p>

	<p><del>function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.</del></p> <p><del>(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) 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.</del></p> <p><del>(3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.</del></p> <p><u>H. An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and producers' compliance with this Part. An insurer may contract with a third party to establish and maintain a system of supervision with respect to producers.</u></p> <p><u>(I) An insurer shall be responsible for ensuring that every producer recommending any transaction with respect to the insurer's policies is adequately trained to make the recommendation.</u></p> <p><u>(J) A producer shall not make a recommendation to a consumer to enter into a transaction about which the producer has inadequate knowledge.</u></p>
	<p><b>I. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:</b></p> <p><b>(1) Truthfully responding to an insurer's request for confirmation of suitability information;</b></p> <p><b>(2) Filing a complaint; or</b></p> <p><b>(3) Cooperating with the investigation of a complaint.</b></p>
<p><b>DOL – BICE Regulation</b></p>	<p><b>N/A – no specific equivalent language</b></p>
<p><b>ACLI</b></p>	<p>I. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:</p> <p>(1) Truthfully responding to an insurer's request for confirmation of <del>suitability information</del> <u>consumer profile information</u>;</p> <p>(2) Filing a complaint; or</p>

	(3) Cooperating with the investigation of a complaint.
<b>NYS DFS – Based on Proposed Rule Provisions; CA DOI</b>	<p><del>K.</del> <del>Neither an insurance</del> producer <del>nor an insurer</del> shall <del>not</del> dissuade, or attempt to dissuade, a consumer from:</p> <p>(1) Truthfully responding to an insurer’s request for confirmation of suitability information;</p> <p>(2) Filing a complaint; or</p> <p>(3) Cooperating with the investigation of a complaint.</p>
	<p><b>J. (1) Sales made in compliance with FINRA requirements pertaining to best interest standards and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if the best interest standard and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner’s ability to enforce (including investigate) the provisions of this regulation.</b></p> <p><b>Drafting Note:</b> Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.</p> <p><b>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</b></p>
<b>ACLI</b>	<p>J. (1) <del>Sales</del><del>Recommendations</del> made in compliance with FINRA requirements pertaining to <del>suitability</del>/best interest standards and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer <del>sales</del><del>recommendations</del> of annuities if the <del>suitability</del>/best interest standard and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner’s ability to enforce (including investigate) the provisions of this regulation.</p> <p><b>Drafting Note:</b> Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the <del>suitability</del><del>best interest</del> requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably</p>



	<p>appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p>
<p><b>IRI</b></p>	<p>J. (1) Sales made in compliance with <del>any other federal or state law or regulation (including but not limited to any rule promulgated by the U.S. Securities and Exchange Commission, FINRA, the U.S. Department of Labor or the U.S. Department of the Treasury) that establish FINRA requirements pertaining to best interest</del> standards <u>of conduct</u> and supervision of annuity transactions <u>that are substantially similar to the requirements of subsections A-D</u> shall satisfy the requirements under this regulation. This subsection applies to <del>FINRA broker-dealer sales of annuities if the best interest standard and supervision is similar to those applied to variable annuity sales</del> <u>all annuity transactions that satisfy the requirements of such law or regulation even if such law or regulation is not directly applicable to such sales</u>. However, nothing in this subsection shall limit the insurance commissioner’s ability to enforce (including investigate) the provisions of this regulation.</p> <p><b>Drafting Note:</b> Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p>
<p><b>CA DOI</b></p>	<p style="text-align: center;">*****</p> <p><u>?Except as provided in this paragraph, all other provisions of this model regulation remain applicable to these broker-dealer sales.</u></p>
<p><b>NYS DFS – Based on Proposed Rule Provisions</b></p>	<p><del>J. (1) Sales made in compliance with FINRA requirements pertaining to best interest standards and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if the best interest standard and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner’s ability to enforce (including investigate) the provisions of this regulation.</del></p> <p><del><b>Drafting Note:</b> Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.</del></p> <p><del>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</del></p>

<b>Suggested Additional Subsections</b>	
<b>ACLI</b>	<u>K. Nothing herein shall impose on an insurer or an insurance producer any continuing obligation to the consumer under this regulation after the recommended annuity is issued.</u>
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<p><u>L. A producer shall not state or imply to the consumer that a recommendation to enter into a transaction is part of financial planning, financial advice, investment management or related services unless the producer has a specific certification or professional designation in that area.</u></p> <p><u>M. Any requirement applicable to a producer pursuant to this Part shall apply to every producer in the transaction regardless of whether the producer has had any direct contact with the consumer.</u></p> <p><u>N. Nothing in this Part shall be construed to prohibit the payment to a producer of any type or amount of compensation otherwise permitted under the Insurance Law.</u></p>
<b>Section 7. Non-Cash Compensation Disclosure Requirement</b>	
<b>In addition to the disclosures required under Section 6 of this regulation, an insurance producer or an insurer, where no producer is involved, shall disclose to the consumer information regarding the non-cash compensation that exceeds \$100 per producer per year the producer receives from an insurer or intermediary that is tied to the sale of annuities including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing, and advertising.</b>	
<b>ACLI</b>	<del>In addition to the disclosures required under Section 6 of this regulation, an insurance producer or an insurer, where no producer is involved, shall disclose to the consumer information regarding the non-cash compensation that exceeds \$100 per producer per year the producer receives from an insurer or intermediary that is tied to the sale of annuities including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing, and advertising.</del>
<b>IRI</b>	<del>In addition to the disclosures required under Section 6 of this regulation, an insurance producer or an insurer, where no producer is involved, shall disclose to the consumer information regarding the non-cash compensation that exceeds \$100 per producer per year the producer receives from an insurer or intermediary that is tied to the sale of annuities including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing, and advertising.</del> <b>MOVED TO SECTION 6C(2)(d).</b>
<b>NAIFA</b>	<del>In addition to the disclosures required under Section 6 of this regulation, an insurance producer or an insurer, where no producer is involved, shall disclose to the consumer information regarding the non-cash compensation that exceeds \$100 per producer per year the producer receives from an insurer or intermediary that is tied to the sale of annuities including, but not limited to, gifts, meals,</del>

	<p><del>trips, entertainment, prizes, marketing, and advertising.</del></p> <p style="text-align: center;"><b>OR</b></p> <p>In addition to the disclosures required under Section 6 of this regulation, an insurance producer or an insurer, where no producer is involved, shall disclose to the consumer information regarding the non-cash compensation <u>based on the producer's volume of production in connection with a particular product the producer sells</u> that exceeds <del>\$100</del><u>\$500 or \$1,000 per producer per year the producer receives from an insurer or intermediary that is tied to the sale of annuities including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing, and advertising.</u></p>
<b>CA DOI</b>	<p>In addition to the disclosures required under Section 6 of this regulation, an insurance producer or an insurer, where no producer is involved, shall disclose to the consumer information regarding the non-cash compensation that exceeds \$100 per producer per year the producer receives from an insurer <u>and/or</u> intermediary that is tied to the sale of <u>proprietary</u> annuities including, but not limited to, <u>health insurance and other ERISA-type benefits</u><del>gifts, meals, trips, entertainment, prizes, marketing, and advertising.</del> <u>Differential compensation and other incentives whether offered by or received from an insurer and/or intermediary, including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing, and advertising, that are intended or would reasonably be expected to cause, producers to make recommendations that are not in the best interest of the consumer are prohibited.</u></p>
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<p><del>In addition to the disclosures required under Section 6 of this regulation, an insurance producer or an insurer, where no producer is involved, shall disclose to the consumer information regarding the non-cash compensation that exceeds \$100 per producer per year the producer receives from an insurer or intermediary that is tied to the sale of annuities including, but not limited to, gifts, meals, trips, entertainment, prizes, marketing, and advertising.</del></p>
<b>Section 8. Prohibited Transactions</b>	
<p><b>An insurance producer or an insurer where no producer is involved:</b></p> <p>(1) Shall receive no more than reasonable cash compensation in making a recommendation;</p> <p>(2) Shall not make any materially misleading statements regarding the annuity transaction; and</p> <p>(3) Shall not base a recommendation on the producer's or insurer's own financial interest.</p>	

<p><b>IALC</b></p>	<p>An insurance producer or an insurer where no producer is involved:</p> <p>(1) Shall receive no more than reasonable cash compensation in making a recommendation;</p> <p>(2) Shall not make any materially misleading statements regarding the <del>annuity transaction</del> <u>recommendation</u>; and</p> <p>(3) Shall not base a recommendation on the producer’s or insurer’s own financial interest.</p>
<p><b>IRI</b></p>	<p><b>Section 8. Prohibited <del>Transactions-Practices</del></b></p> <p><u>In recommending an annuity to a consumer, An</u> insurance producer or an insurer where no producer is involved:</p> <p>(1) Shall receive no more than reasonable cash compensation <del>in making a recommendation</del>;</p> <p>(2) Shall not make any materially misleading statements regarding the <u>recommended</u> annuity transaction; and</p> <p>(3) Shall <del>not base a recommendation on</del> <u>put the interests of the consumer ahead of</u> the producer’s or insurer’s own financial interest.</p>
<p><b>NAIFA</b></p>	<p>An insurance producer or an insurer where no producer is involved:</p> <p>(1) Shall receive no more than reasonable cash compensation in <del>making a recommendation</del> <u>connection with the sale of a recommended annuity, provided, however, that nothing in this regulation shall be construed to prohibit payment to a producer of any type or amount of compensation otherwise permitted under this state’s insurance laws; and</u></p> <p>(2) Shall not make any materially misleading statements regarding the annuity transaction; <del>and</del></p> <p><del>(3) Shall not base a recommendation on the producer’s or insurer’s own financial interest.</del></p>
<p><b>CA DOI</b></p>	<p>An insurance producer or an insurer where no producer is involved:</p> <p>(1) Shall receive no more than reasonable cash compensation in making a recommendation;</p> <p>(2) Shall not make any materially misleading statements <u>or omissions</u> regarding the annuity transaction; and</p>

	(3) Shall not base a recommendation on the producer’s or insurer’s own financial interest.
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<p><del>An insurance producer or an insurer where no producer is involved:</del></p> <p><del>(1) Shall receive no more than reasonable cash compensation in making a recommendation;</del></p> <p><del>(2) Shall not make any materially misleading statements regarding the annuity transaction; and</del></p> <p><del>(3) Shall not base a recommendation on the producer’s or insurer’s own financial interest.</del></p>
<b>Section 9. Insurance Producer Training</b>	
<b>A. An insurance producer shall not solicit the sale or replacement 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 this subsection.</b>	
<b>ACLI</b>	A. An insurance producer shall not solicit, <del>negotiate, or recommend</del> the sale or replacement 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 this subsection.
<b>IRI</b>	A. An insurance producer shall not solicit the sale <del>or replacement</del> 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 this subsection.

**B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.**

**(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.**

**(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.**

**(3) The training required under this subsection 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; (f) Financial exploitation of seniors and other vulnerable adults; and (g) Appropriate sales practices, replacement and disclosure requirements, including the requirements under this regulation.**

**(4) (a) Providers of courses intended to comply with this subsection 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 annuity products. Additional topics may be offered in conjunction with and in addition to the required outline. (b) A training course that complies with the requirements of FINRA Rule 1250 meets the requirements of Paragraph (3).**

**(5) A provider of an annuity training course intended to comply with this subsection 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 [insert reference to State law or regulations governing producer continuing education course approval].**

**(6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].**

**(7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].**

**(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.**

**(9) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training**

<p><b>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.</b></p>	
<p><b>ACLI</b></p>	<p style="text-align: center;">*****</p> <p><u>(9) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.</u></p> <p><del>(9)</del>(10) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection 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.</p>
<p><b>IRI</b></p>	<p style="text-align: center;">*****</p> <p>(3) The training required under this subsection 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; <del>(f) — Financial exploitation of seniors and other vulnerable adults;</del> and <del>(g)</del>(f) Appropriate sales practices, replacement and disclosure requirements, <del>including the requirements under this regulation.</del></p>
<p><b>CA DOI</b></p>	<p>B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.</p> <p><u>?Drafting Note: States may have different training requirements. As such, states should review the requirements of paragraph (1) for consistency with existing state laws or regulations.?</u></p> <p>(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.</p> <p style="text-align: center;">*****</p>

	<p>(3) The training required under this subsection 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 <del>product specific annuity contract features fixed, variable, and indexed annuity contract provisions</del> affect consumers; (d) The application of income taxation of qualified and non-qualified annuities; (e) The primary uses of annuities; (f) Financial exploitation of seniors and other vulnerable adults; <u>(g) Prohibited sales practices, the recognition of indicators that a proposed [insured] may lack the short-term memory or judgment to knowingly purchase an insurance product, and fraudulent and unfair practices for sales of annuities;</u> and <del>(g)(h)</del> Appropriate sales practices, replacement and disclosure requirements, including the requirements under this regulation.</p> <p>(4) <del>(a)</del> Providers of courses intended to comply with this subsection 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 annuity products. Additional topics may be offered in conjunction with and in addition to the required outline. <del>—(b) A training course that complies with the requirements of FINRA Rule 1250 meets the requirements of Paragraph (3).</del></p> <p style="text-align: center;">*****</p> <p><del>(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.</del></p> <p style="text-align: center;">*****</p>
<b>Additional Suggested Subsections</b>	
<i>None suggested</i>	
<b>Section 10. Compliance Mitigation; Penalties</b>	
<p><b>A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:</b></p> <p><b>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer’s, or by its insurance producer’s, violation of this regulation;</b></p> <p><b>(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 regulation; and</b></p>	



<b>(3) Appropriate penalties and sanctions.</b>	
<b>ACLI</b>	<p>A. An insurer is responsible for compliance with <u>its obligations under</u> this regulation <u>when a recommendation results in the purchase of its annuity products, or for the training required in Section 8 for producers authorized to sell the insurer’s annuity products.</u> If a violation occurs, either because of the action or inaction of the insurer <u>in meeting its obligations under Section 6H</u> or <del>the action or inaction of an</del> insurance producer <u>in meeting the producer’s obligations under this regulation</u>, the commissioner may order:</p> <p>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer’s, <del>or by its insurance producer’s,</del> violation of <u>its obligations under</u> this regulation;</p> <p>(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 regulation; and</p> <p>(3) Appropriate penalties and sanctions.</p>
<b>CA DOI</b>	<p>A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, <u>in addition to any other available penalties, remedies, or administrative actions,</u> the commissioner may order:</p> <p>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer’s, or by its insurance producer’s, violation of this regulation;</p> <p>(2) A general agency, <del>independent agency</del> <u>managing general agent</u> or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of this regulation; and</p> <p>(3) Appropriate penalties and sanctions.</p>
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<p><b>Section 10. <del>Compliance Mitigation; Penalties</del> <u>Insurer Responsibility</u></b></p> <p><del>A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:</del></p> <p><del>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer’s, or by its insurance producer’s, violation of this regulation;</del></p>

	<p><del>(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 regulation; and</del></p> <p><del>(3) Appropriate penalties and sanctions-</del></p> <p><del>A. The insurer shall take appropriate corrective action for any consumer harmed by a violation of this Part by the insurer, the producer, or any third party that the insurer contracts with pursuant to subdivision H. In determining any penalty or other disciplinary action against the insurer, the commissioner may consider as mitigation any appropriate corrective action taken by the insurer, or whether the violation was part of a pattern or practice on the part of the insurer.</del></p> <p><del>B. An insurer shall establish and maintain procedures designed to prevent financial exploitation and abuse. For purposes of this subsection, "financial exploitation and abuse" means improper use of an adult's funds, property or resources by another individual, including fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.</del></p> <p><del>C. (1) An insurer shall provide: (a) to a consumer, all relevant policy information with respect to evaluating any transaction or proposed transaction, including a comparison, in a form acceptable to the commissioner, of all available policies of the same product type offered by the insurer; and (b) to a producer, in the case of a proposed replacement, all relevant policy information with respect to any transaction that is necessary for the evaluation of suitability by the producer or the replacing insurer.</del></p> <p><del>(2) The insurer shall provide the information in accordance with Part 51 of this Title (Insurance Regulation 60), regardless of whether there exists any specific section for the inclusion of the information within the disclosure statement set forth in Appendices 10A and 10B of Part 51.</del></p>
<p><b>W&amp;SFG</b></p>	<p>A. <del>Except as set forth in subsection C,</del> An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:</p> <p>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;</p> <p>(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 regulation; and</p> <p>(3) Appropriate penalties and sanctions.</p>

<p><b>B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] 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.</b></p> <p><b>Drafting Note:</b> Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.</p> <p><b>Drafting Note:</b> A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State’s statute that authorizes the commissioner to impose penalties and fines.</p>	
<b>NYS DFS – Based on Proposed Rule Provisions</b>	<p><del>B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] 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.</del></p> <p><del><b>Drafting Note:</b> Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.</del></p> <p><del><b>Drafting Note:</b> A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State’s statute that authorizes the commissioner to impose penalties and fines.</del></p>
<b>Additional Suggested Subsections</b>	
<b>ACLI</b>	<u>C. [Placeholder for any additional considerations needed for harmonization efforts with other regulators].</u>
<b>W&amp;SFG</b>	<u>C. Notwithstanding anything contrary contained herein, an insurer shall not have responsibility for an insurance producer’s compliance with Section 6B(3), Section 6C, Section 7, Section 8 or compliance with any requirement that recommendation be in the best interest of</u>

	<u>the consumer.</u>
CA DOI	<u>C. Nothing in this [model] regulation shall affect the obligation of an insurer for acts of its agents, or any consumer remedy or cause of action that is otherwise provided for.</u>
<b>Section 11. Recordkeeping</b>	
<p><b>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 and other information used in making the recommendations that were the basis for insurance transactions for six (6) 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 an insurance producer.</b></p> <p><b>Drafting Note:</b> States should review their current record retention laws for consistency with Subsection A above.</p>	
ACLI	<p>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, <u>written</u> disclosures made to the consumer and other information used in making the recommendations that were the basis for insurance transactions for six (6) 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 an insurance producer.</p> <p><b>Drafting Note:</b> States should review their current record retention laws for consistency with Subsection A above.</p>
MI DIFS	<p>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, <u>the specific products compared</u> and other information used in making the recommendations that were the basis for insurance transactions for six (6) 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 an insurance producer.</p> <p><b>Drafting Note:</b> States should review their current record retention laws for consistency with Subsection A above.</p>

<p><b>B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.</b></p> <p><b>Drafting Note:</b> This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.</p>	
<p><i>No comments received</i></p>	
<p><b>Section 12. Effective Date</b></p>	
<p><b>The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on [insert date], whichever is later.</b></p>	
<p><b>ACLI</b></p>	<p>The amendments to this regulation shall take effect <del>six (6) months</del> _____ after the date the regulation is adopted or on [insert date], whichever is later.</p>
<p><b>IRI</b></p>	<p>The amendments to this regulation shall take effect <del>six (6)</del>[ _____ ] months after the date the regulation is adopted or on [insert date], whichever is later.</p>

### FINRA Requirements

<b>FINRA Rule 2111—Suitability</b>	
<p>(a) A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.</p>	
Supplementary Material (select provisions)	
<b>.01 General Principles.</b>	Implicit in all member and associated person relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of FINRA rules, with particular emphasis on the requirement to deal fairly with the public. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.
<b>.04 Customer's Investment Profile.</b>	A member or associated person shall make a recommendation covered by this Rule only if, among other things, the member or associated person has sufficient information about the customer to have a reasonable basis to believe that the recommendation is suitable for that customer. The factors delineated in Rule 2111(a) regarding a customer's investment profile generally are relevant to a determination regarding whether a recommendation is suitable for a particular customer, although the level of importance of each factor may vary depending on the facts and circumstances of the particular case. A member or associated person shall use reasonable diligence to obtain and analyze all of the factors delineated in Rule 2111(a) unless the member or associated person has a reasonable basis to believe, documented with specificity, that one or more of the factors are not relevant components of a customer's investment profile in light of the facts and circumstances of the particular case.
<b>.05 Components of Suitability Obligations.</b>	Rule 2111 is composed of three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability. (a) The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least <i>some</i> investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. A member's or associated person's reasonable diligence must

	<p>provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule.</p> <p>(b) The customer-specific obligation requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a).</p> <p>(c) Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.</p>
<b>.06 Customer's Financial Ability.</b>	<p>Rule 2111 prohibits a member or associated person from recommending a transaction or investment strategy involving a security or securities or the continuing purchase of a security or securities or use of an investment strategy involving a security or securities unless the member or associated person has a reasonable basis to believe that the customer has the financial ability to meet such a commitment.</p>

**FINRA Rule 3220—Influencing or Rewarding Employees of Others**

<b>FINRA Rule 2320—Variable Contracts of an Insurance Company (Compensation Requirements) – Select Provisions</b>	
<b>(b) Definitions</b>	<p style="text-align: center;">*****</p> <p>(3) The terms "affiliated member," "compensation," "cash compensation," "non-cash compensation" and "offeror" as used in paragraph (g) of this Rule shall have the following meanings:</p> <p>(A) "Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.</p> <p>(B) "Compensation" shall mean cash compensation and non-cash compensation.</p> <p>(C) "Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset based sales charge, loan, override, or cash employee benefit received in connection with the sale and distribution of variable contracts.</p> <p>(D) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of variable contracts that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.</p> <p>(E) "Offeror" shall mean an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate</p>

	<p>account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act) of such entities.</p> <p style="text-align: center;">*****</p>
<p><b>(g) Member Compensation</b></p>	<p>In connection with the sale and distribution of variable contracts:</p> <p>(1) Except as described below, no associated person of a member shall accept any compensation from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:</p> <p>(A) the arrangement is agreed to by the member;</p> <p>(B) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the SEC that applies to the specific fact situation of the arrangement;</p> <p>(C) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of the FINRA rules; and</p> <p>(D) the record keeping requirement in paragraph (g)(3) is satisfied.</p> <p>(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.</p> <p>(3) Except for items as described in paragraphs (g)(4)(A) and (B), a member shall maintain records of all compensation received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, and the nature and value of non-cash compensation received.</p> <p>(4) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Notwithstanding the provisions of paragraph (g)(1), the following non-cash compensation arrangements are permitted:</p> <p>(A) Gifts that do not exceed an annual amount per person fixed periodically by FINRA<sup>1</sup> and are not preconditioned on achievement of a sales target.</p> <p>(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.</p> <p>(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:</p> <p>(i) the record keeping requirement in paragraph (g)(3) is satisfied;</p> <p>(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is</p>



	<p>not preconditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (g)(4)(D);</p> <p>(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;</p> <p>(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and</p> <p>(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (g)(4)(D).</p> <p>(D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:</p> <p>(i) the member's or non-member's non-cash compensation arrangement, if it includes variable contract securities, is based on the total production of associated persons with respect to all variable contract securities distributed by the member;</p> <p>(ii) the non-cash compensation arrangement requires that the credit received for each variable contract security is equally weighted;</p> <p>(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and</p> <p>(iv) the record keeping requirement in paragraph (g)(3) is satisfied.</p> <p>(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (g)(4)(D).</p>
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**FINRA Rule 3220—Influencing or Rewarding Employees of Others**

- (a) No member or person associated with a member shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of one hundred dollars per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind is considered a gratuity.
- (b) This Rule shall not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Such agreement shall include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.
- (c) A separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in paragraph (b) and any employment compensation paid as a result thereof shall be retained by the member for the period specified by SEA Rule 17a-4.

**SEC Requirements**

<b>Investment Advisers Act of 1940 – Section 206(1) and (2)</b>	
<p>SEC. 206. It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—</p> <p>(1) to employ any device, scheme, or artifice to defraud any client or prospective client;</p> <p>(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;</p> <p>(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph (3) shall not apply to any transaction with a customer of a broker or dealer if such broker or dealer is not acting as an investment adviser in relation to such transaction; or</p> <p>(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.</p>	
<b>Interpretative Supplementary Material from the SEC Staff Section 913 Study (pages 21-28)</b>	
<b>Section 206(1) and (2)</b>	<p>The Supreme Court has construed Advisers Act Section 206(1) and (2) as establishing a federal fiduciary standard governing the conduct of advisers. The adviser’s fiduciary duty is enforceable under Advisers Act Sections 206(1) and (2), which prohibit an adviser from “employ[ing] any device, scheme, or artifice to defraud any client or prospective client” and from engaging in “any transaction, practice or course of business which operates as a fraud or deceit on any client or prospective client.”</p> <p>Under the Advisers Act, an adviser is a fiduciary. This fiduciary standard applies to the investment adviser’s entire relationship with its clients and prospective clients, imposes upon investment advisers the “affirmative duty of ‘utmost good faith, and full and fair disclosure of all material facts,’ as well as an affirmative obligation to ‘employ reasonable care to avoid misleading’” their clients and prospective clients.</p> <p>Fundamental to the federal fiduciary standard are the duties of loyalty and care. The duty of loyalty requires an adviser to serve the</p>

	<p>best interests of its clients, which includes an obligation not to subordinate the clients’ interests to its own. An adviser’s duty of care requires it to “make a reasonable investigation to determine that it is not basing its recommendations on materially inaccurate or incomplete information.”</p> <p>As part of its fiduciary duty, an adviser must fully disclose to its clients all material information that is intended “to eliminate, or at least expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”</p> <p>Under the antifraud provisions of the Advisers Act, an investment adviser must disclose material facts to its clients and prospective clients whenever the failure to do so would defraud or operate as a fraud or deceit upon any such person. The adviser’s fiduciary duty of disclosure is a broad one, and delivery of the adviser’s brochure alone may not fully satisfy the adviser’s disclosure obligations. The duty to disclose material facts applies to conflicts of interest—or potential conflicts of interest—that arise during an adviser’s relationship with a client. Therefore, the type of required disclosure will depend on the facts and circumstances. As a general matter, an adviser must disclose all material facts regarding the conflict so that the client can make an informed decision whether to enter into or continue an advisory relationship with the adviser.</p> <p>Investment advisers owe their clients the duty to provide only suitable investment advice. To fulfill the obligation, an adviser must make a reasonable determination that the investment advice provided is suitable for the client based on the client’s financial situation and investment objectives. In addition, as a fiduciary, an investment adviser has “a duty of care requiring it to make a reasonable investigation to determine that it is not basing its recommendations on materially inaccurate or incomplete information.”</p>
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**Agenda Item #5**

**Discuss Any Other Matters Brought Before the Working Group—*Director Dean L. Cameron (ID)***