Standard Care: Best Interest

Policy Brief

A Policy Position and Overview:

By: NAIFA Government Relations, March 2024

NAIFA | Advocacy

The Issue

The updated National Association of Insurance Commissioners (NAIC) Annuity Suitability Model #275 establishes the Best Interest Standard of Care, which requires a producer, or insurer where no producer is involved, to consider the consumer's needs and financial interests above their own.

Background

Model Regulation #275, known as the Updated Suitability in Annuity Transaction, was initially adopted in 2010. It established the suitability standard of care. However, both industry and consumers began to raise concerns about the "suitability" standard and whether there was a gap between "suitable" and what was truly in the "best interest of the client." Federally, the Department of Labor (DOL) and the Securities and Exchange Commission (SEC) released final rules clarifying that financial professionals must put **the client's** interests before their own. (RegBI) As a result, it became clear that the NAIC would need to develop an enhanced standard to align with the DOL and the SEC or risk more unworkable state activity.

"The Best Interest Standard ensures that customer's interests are put first."

In 2017, the NAIC appointed the Annuity Suitability Working Group (A) to review and update the Suitability in Annuity Transaction Model Regulation and charged them to create a workable standard of care for the recommendation and sale of annuities. As a result, revisions were adopted, and the final rule took effect in June 2020. The updates included an elevated standard of care (Best Interest) that provides consumers confidence in guaranteed income products and encourages regulators to adopt sensible and consistent requirements for the industry. Additionally, it provides a workable framework with other applicable federal and state standards of care rules.

The revised NAIC model aligns well with its federal counterpart – SEC's Regulation Best Interest. Together, these two initiatives will significantly enhance protections for consumers nationwide who seek guaranteed lifetime income in retirement through annuities. Any proposal of this model that doesn't specifically reference the words "best interest" would create a significant credibility problem and possibly embolden proponents of a fiduciary standard who falsely claim that any such proposal was nothing more than "warmed-over suitability."

Status

Forty-five (45) states have adopted the updated model language, with an additional four (4) currently in the process of adoption.

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NAIFA Member's Code of Ethics

Helping my clients protect their assets and establish financial security, independence, and economic freedom for themselves and those they care about is a noble endeavor and deserves my promise to support high standards of integrity, trust, and professionalism throughout my career as an insurance and financial professional. With these principles as a foundation, I freely accept the following obligations Including - To work diligently to satisfy the needs of my clients by acting in their best interest.

Best Interest Standard of Care

The Best Interest Standard established in the updated model ensures that consumers receive valuable information to help them make informed decisions when purchasing an annuity. The best interest standard ensures that customers' interests are put first. It's intended to protect access to advice, choices in how to engage with advisors and to provide clear obligations with respect to disclosures, potential conflicts of interest, and knowing the consumers' needs and objectives.

Producer Requirements

One of the most critical elements of the NAIC model is that it clearly defines the benchmarks producers must meet to satisfy the obligation to the client.

- **Care, Disclosure, Conflict of interest, Documentation**

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

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

Supervision Requirements

The model now requires insurers to establish and maintain reasonable procedures to identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation based on sales of specific annuities within a limited period.

Training Requirements

The updated model sets enhanced continuing education requirements for annuities, including updated education material and coursework reflecting the best interest obligations and producer requirements.

Safe Harbor

The updated model includes an expanded safe harbor for recommendations and sales of annuities made by broker-dealers in compliance with FINRA requirements or made in compliance with "comparable standards" by registered investment advisors and investment advisory representatives subject to fiduciary.

NAIFA Position

NAIFA actively participated in the NAIC Committee deliberations and supported the amended model. NAIFA worked diligently to ensure that the model does not require recommending the least expensive product and does not place a fiduciary duty upon the producer.

NAIFA encourages states to swiftly and uniformly adopt the revised NAIC Annuity Best Interest Model. Its adoption aligns with the NAIFA's goal of a uniform and standardized sales process for producers across the country.

At a Glance

The updated 2020 NAIC Annuity Suitability Model establishes a best interest standard of care for annuity solicitations and sales, which requires a producer, or insurer where no producer is involved, to consider the consumer's needs and financial interests above their own. It provides for a clear definition of best interest and clearly defines the benchmarks producers must meet to satisfy their obligation to the client.

The updated model aligns well with its federal counterpart – SEC's Regulation Best Interest. Together, these two initiatives will significantly enhance protections for consumers nationwide who seek guaranteed lifetime income in retirement through annuities.

Talking Points

- The updated NAIC Suitability Model, incorporating the best interest standard of care, is one of the most important NAIC consumer protection initiatives in the last 20 years.
- The Best Interest Standard ensures that customers' interests are put first and that they continue to have access to advice and choices on engaging with financial professionals.
- Financial professionals must put their client's financial interests ahead of their own.
- The revised model law provides compliance, clarity, and consistency of financial services by defining specific obligations and requirements to satisfy the standard.
- For financial professionals, there are clear obligations for disclosures, potential conflicts of interest, and understanding of the consumers' needs and objectives.
- The revised model aligns well with its federal counterpart – SEC's Regulation Best Interest. Together, these two initiatives significantly enhance protections for consumers across the country who seek guaranteed lifetime income in retirement through annuities.
- Uniform adoption aligns with the NAIFA's goal of a uniform and standardized sales process for producers across the country.
- NAIFA's Code of Ethics, to which every member pledges, includes the principle: "To work diligently to satisfy the needs of my clients by acting in their best interest."
- There is widespread insurance industry support for the Best Interest Standard of Care in annuity transactions.

Additional Questions? Contact Us.

To Learn More, Visit Us Online at advocacy.naifa.org or contact bweiss@naifa.org.

About NAIFA

The National Association of Insurance and Financial Advisors is the preeminent membership association for the multigenerational community of financial professionals in the United States. NAIFA members subscribe to a strong Code of Ethics and represent a full spectrum of financial services practice specialties. They work with families and businesses to help Americans improve financial literacy and achieve financial security.

NAIFA provides producers a national community for advocacy, education, and networking along with awards, publications, and leadership opportunities to allow NAIFA members to differentiate themselves in the marketplace. NAIFA has 53 state chapters and 35 local chapters. NAIFA members in every congressional district advocate on behalf of producers and consumers at the state, interstate, and federal levels.

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