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Standard Care: Best Interest

Annuity Suitability Model: Common Questions & Answers

By: NAIFA Government Relations, Updated February 2023

Q: Why did the NAIC decide to update the Model to Include Best Interest Standard of Conduct?

A: The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule (vacated) and the SEC Reg BI.

The Reg BI establishes a best-interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is compatibility with the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but NOT a fiduciary standard.

Q: What is the best interest standard of conduct, and how would a producer or insurer satisfy it?

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

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

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

Q: What types of recommendations fall under the best interest standard of conduct?

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

Q: To satisfy the disclosure obligation, when can a producer is providing the “Insurance Agent (Producer) Disclosure for Annuities” form? Can a producer provide the form at the initial client meeting or at any time prior to a recommendation or sale of an annuity?

A: A producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting or at any time prior to the recommendation of annuity. However, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation or sale, the producer is expected to provide the consumer with an updated form.

Q: Is the commission paid on the annuity sale considered a material conflict of interest?

A: No. The model contains a disclosure requirement in which producers must disclose to a consumer, using a disclosure form their relationship with the consumer, the role they will play in the transaction, and a description (not amount) of the cash and non-cash compensation they will receive. Considering these robust disclosures, and the fact most consumers recognize producers will be compensated for their work, it was determined that compensation/commission is not a material conflict of interest.

Q: Does the Best Interest Standard apply to a producer who never meets a client, but assists a producer in making a recommendation to a client?

A: Yes, the standard can apply to a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back-office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

Q: Does this apply to Variable Annuity Recommendations?

A: The model applies fixed and indexed annuity recommendations. Variable annuity recommendations are regulated by the SEC and Regulation Best Interest (RegBI). Producers who adhere to a comparable standard are covered under the model’s safe harbor provisions. Producers that are not licensed to sell variable annuities are not required to obtain a securities license to meet the annuity best interest standard, so long as they do not recommend products they are not licensed to sell.

Q: Are there new producer training requirements?

A: Yes, all producers must complete a one-time training course that covers general annuity principles – including the types and uses of annuities, how annuity contract features affect consumers, and tax implications – as well as information about the new standard of conduct and the other requirements of the revised model. The specific training required depends on what prior training the producer has completed.

A producer who has completed the annuity training requirements under the prior version of the model must complete **either a new four-credit training course that meets the requirements of the revised model or the one-credit training course that focuses on the new sales practices,** replacement, and disclosure requirements established by the revised model. Courses must be approved by the insurance department.

A producer who has NOT completed the annuity training requirements under the prior version of the model must complete the four-credit training course that meets the requirements of the revised model. Producers who have not completed the annuity training requirements under the prior version of the model may not satisfy the training requirement by taking only the one-credit training course.

The producer training requirement also applies to producers who are registered with FINRA and who engage in the sale of annuities.

Q: Does the new training count towards a producer's CE credits?

A: A producer who completes the required training will receive CE credit only if the course was approved by their resident state before the date the course was taken, and the course provider submits a roster and all applicable fees to the insurance department in the producer's resident state

Q: Where can I find more information?

A: If you have any questions, please feel free to reach out to the NAIFA's State Government Relations Team. Additionally, here are some great quick reference websites.

- Training Requirement Dates by State - RegEd
- NAIC Model Language – Suitability in Annuity Transactions #275
- ACLI Best Interest Interactive Map
- NAIC Model #275 FAQ

Additional Questions? Contact Us.

For additional questions or assistance, please contact the NAIFA State Government Relations, Bianca Alonso Weiss at bweiss@naifa.org or visit advocacy.naifa.org.