

# POLICY BRIEF

## Standard of Care: Best Interest

### *A Policy & Position Overview*

### 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 clients' 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.

“ **A Best Interest Standard ensures that customers' 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 across the country 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."

## **BEST INTEREST STANDARD**

### *Why the Best Interest Standard?*

The Best Interest Standard established in the updated model works to ensure that consumers receive valuable information to help them make informed decisions when considering the purchase of 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

## **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.

## **STATUS**

Twenty-three (23) states have adopted the updated model language, with an additional 10 currently in the process of adoption.

- Maryland
- Wisconsin
- South Dakota
- New Mexico
- Pennsylvania
- Kentucky
- Mississippi
- North Dakota
- Michigan
- Maine
- Iowa
- Idaho
- Delaware
- Connecticut
- Arkansas
- Montana
- Nebraska
- Ohio
- Rhode Island
- Texas
- Virginia
- Arizona
- Alabama

## 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 duties.

## 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**.

# 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 across the country who seek guaranteed lifetime income in retirement through annuities.



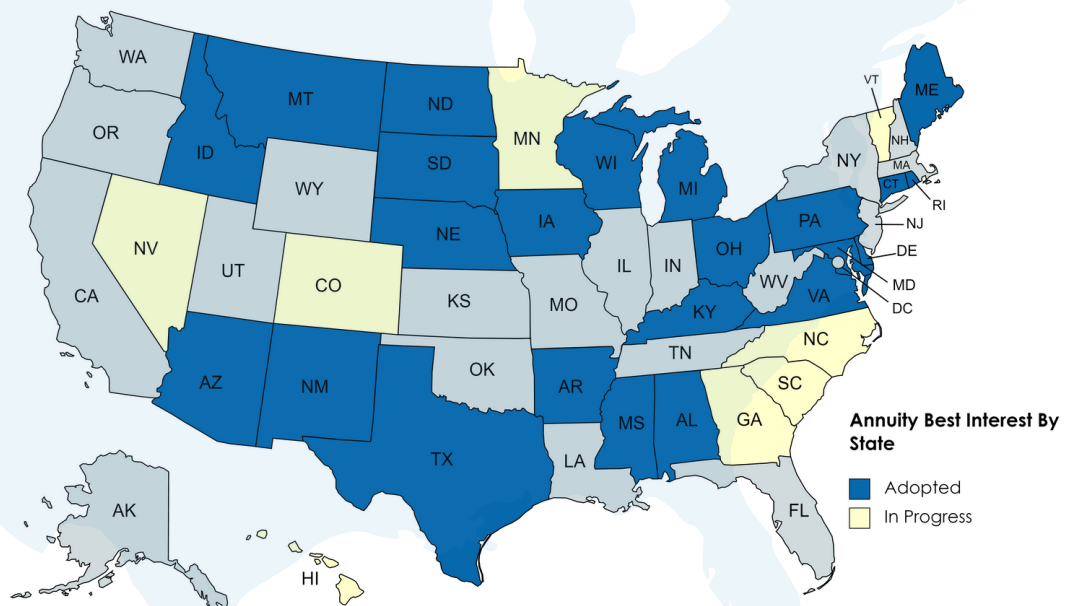
## Position

NAIFA was an active participant 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.

## Status

Twenty-three (23) states have adopted the updated model language, with an additional 7 currently in the process of adoption. .



## 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 how to engage 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.

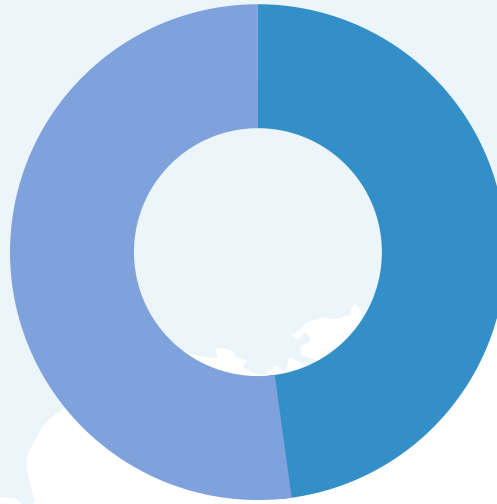
- NAIFA's Code of Ethics, to which every member pledges, includes the principle: "To work diligently to satisfy the needs of my clients by acting in their best interest."
- There is widespread insurance industry support for the Best Interest Standard of Care in annuity transactions.

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## ADOPTION PATHWAY

11 states have elected to pursue the model update by department regulation change, while 12 have passed updates via legislation.

**Legislative Bill**  
**12**



**Regulation Change**  
**11**

## 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 and territorial chapters and 35 local metropolitan chapters. NAIFA members in every congressional district advocate on behalf of producers and consumers at the state, interstate, and federal levels.



Advocacy

TOGETHER  
WE CAN TAKE ON  
ANYTHING

# TALKING POINTS

## Standard of Care: Best Interest *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 how to engage 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.



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# TESTIMONY

## Standard of Care: Best Interest *Sample Testimony*

Chairman/Chairwoman XXX and members of the Senate Industry, Business and Labor Committee The National Association of Insurance and Financial Advisors (NAIFA) and NAIFA-XXX (hereafter referred to as NAIFA) would like to express our thanks to the Senate Committee on Commerce and Energy for their consideration of BILL NUMBER, which enhances the rules governing annuity transactions by establishing a best interest standard of conduct for annuity recommendations and sales.

Founded in 1890, NAIFA represents the interests of more than 20,000 licensed insurance agents and financial advisers across the country. Ninety percent of NAIFA members serve middle-income clients and lower-income individuals and families. I am the current POSITION of the STATE Chapter, which has close to 600 members that serve our community.

NAIFA supports the adoption of BILL NUMBER that, among other provisions, creates the best interest standard in annuity transactions. The best interest standard requires producers and insurers to act in the best interest of annuity purchasers and not put their financial interests ahead of the consumer's.

A substantial percentage of NAIFA members sell annuities. Annuities are complex products that provide lifetime guarantees and entail design options based on the consumer's needs and therefore merit the best interest of the consumer standard of care. The client's best interest is easily understood, plain English and the obligations and responsibilities to satisfy this requirement are clearly defined.



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## **Sample Testimony Cont.**

NAIFA believes that BILL NUMBER strikes the appropriate balance between protecting consumers, promoting market competition, and avoiding over-regulation, in turn ensuring customer choice in competitive products and trustworthy options for retirement planning.

The updated NAIC model and the best interest standard has broad support from the financial services community, producers, and insurers alike. Best interest says, "I'm going to put my client's interests in front of my own, and I'm going to meet our obligations." In STATE, these are values that we believe in. Not all my friends are my clients. But I want to know that whoever they are working with is putting my friend's best interest ahead of their own.

This bill is also about uniformity and transparency. Our community will know what to expect when deciding to buy an annuity. That process can be built on trust because this is a relationship business, not a transactions business. Our clients must trust us with their most personal information before we ever get down to what products we will implement.

NAIFA members subscribe to a code of ethics that requires putting our clients' interests first. To our practice, this is the industry catching up to where we have been, as people whom clients place their trust and confidence.

We support establishing a consistent and workable best interest standard for financial professionals and hope STATE will to join the 21 other states that already adopted this model. Further, we applaud HOUSE BILL SPONSOR and SENATE BILL SPONSOR for sponsoring BILL NUMBER to provide a clear and enhanced standard of care for annuity recommendations, which is vital to support consumer confidence in guaranteed income products.

Thank you for allowing me to speak today, and I'm happy to answer questions.



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# ACTION ALERT

## Standard of Care: Best Interest *Action Alert*

**Contact your representative and members of the Business Committee TODAY and urge them to SUPPORT (Insert Bill Number).**

The Annuity Consumer Protection Act provides a standard of care for annuity recommendations to provide consumer confidence in guaranteed income products. This bill is consistent with the amended NAIC model regulation (Insert the name of model regulation), in which NAIFA was heavily involved in the drafting and design. We believe this model reflects the efforts intended to thwart unworkable rules and be uniform and consistent with other federal and state standards of care rules. Reasons to support this bill include:

- The bill aligns well with the Security and Exchange Commission's (SEC) Regulation Best Interest.
- Uniform and consistent standard of care rules will significantly enhance protections for Idahoans who seek guaranteed lifetime income in retirement through annuities.
- It is a simple best interest standard, specifically not a fiduciary standard, requiring financial professionals to act in the best interest of annuity purchasers by putting the client's interest ahead of their own financial interests.
- The best interest standard strikes the appropriate balance between protecting consumers and maintaining market competition while avoiding over-regulation.

Lawmakers want to hear from constituents, and NAIFA members are uniquely positioned to address this issue since we are working with consumers daily, helping them with their retirement needs.

**Take Action and let your representative and members of the Business Committee know why this is important to you. And let them know that you encourage their SUPPORT for HB/SB XXX.**



**For more information contact:**  
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## Sample Message to Lawmaker

As your constituent, a financial professional, and a member of the National Association of Insurance and Financial Advisors (NAIFA), I urge you to **support SB/HB XX**.

The **Annuity Consumer Protection Act** provides a standard of care for annuity recommendations to provide consumer confidence in guaranteed income products. It is consistent with the amended NAIC model regulation, which aligns with other federal and state standard of care rules.

### Reasons to support this bill include:

- STATEONIANS can be confident that the companies and the agents with whom they entrust their retirement savings are acting in their best interest and not putting their financial interests ahead of consumers' interests.
- The Best Interest Standard is not overly burdensome to producers and companies. It strikes the appropriate balance between protecting consumers, promoting market competition, and avoiding over-regulation. These rules reject a fiduciary-only approach, thus safeguarding the ability of working-class savers to access the financial guidance to plan for their financial futures.
- The bill aligns well with the Security and Exchange Commission's Regulation Best Interest. In addition, uniform and consistent standard of care rules will significantly enhance protections for STATEONIANS who seek guaranteed lifetime income in retirement through annuities.

As a member of the NAIFA, I am happy to make myself available to discuss my experience and expertise as an agent and answer any questions you may have.

**Please support this legislation.** Thank you for your time and leadership on this crucial issue.

Your Name Here

*Signature*

NAIFA-STATE Member Since XXXX



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