NAIC Annuity Suitability "Best Interest" Model Regulation

Jolie H. Matthews, NAIC

Senior Health and Life Policy Counsel

1871
2021

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Model #275: Timeline

- *2003:* Model #275 originally applied only to seniors
- *2006:* Model #275 expanded to apply to all consumers
- ***2010:*** Model #275 defined "suitability information", required insurer oversight and compliance, added training requirements, and model was referenced in federal law
- ***2020:*** Best Interest Amendments adopted by NAIC
- *2021:* Annuity Suitability (A) Working Group – Frequently Asked Questions (FAQ) document

Best Interest Obligation

A producer, when making a recommendation of an annuity, ***shall act in the best interest of the consumer*** under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest.

Best Interest Standard

The best interest standard means satisfying the requirements in these **four obligations**:

1. Care obligation;
2. Disclosure obligation;
3. Conflict of interest obligation; and
4. Documentation obligation.

Other Revisions Related to the Best Interest Standard

Insurer Supervision System:

- Assess whether a producer has provided required information to the consumer upon delivery.
- Identify and address suspicious refusals to provide consumer profile information.
- **Identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.**

Other Revisions Related to the Best Interest Standard

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

- Existing ***safe harbor provision*** was expanded to include "financial professionals"—broker-dealers and registered representatives of broker-dealers, investment advisers or investment adviser representatives and plan fiduciaries or fiduciaries.
- Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this regulation.
- Insurance commissioner retains authority to investigate and enforce the revised model's provisions.

Other Revisions Related to the Best Interest Standard

New Producer Training Requirements:

A producer who completed an annuity training course prior to the effective date of the amended regulation, shall within 6 months, complete either:

- A new four (4) credit training course; or
- An additional one-time one (1) credit training course on appropriate sales practices, replacement and disclosure requirements under the amended regulation

Provision	Model #275	SEC Reg BI
Best Interest Obligation	Act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest.	Act in the best interest of the retail customer at the time the recommendation is made, without placing their financial or other interest ahead of the interest of the retail customer.
Care Obligation	The producer, shall exercise reasonable diligence, care and skill to: • Know the consumer's financial situation, insurance needs and financial objectives; • Understand the available recommendation options after making a reasonable inquiry into options available to the producer; • Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and • Communicate the basis or bases of the recommendation.	The broker, dealer exercises reasonable diligence, care, and skill to: • Understand potential risks, rewards, and costs associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers; • Have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards, and costs associated with the recommendation and does not place the financial or other interest of the broker, dealer, or such natural person ahead of the interest of the retail customer; • Have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker, dealer, or such natural person making the series of recommendations ahead of the interest of the retail customer.

Provision	Model #275	SEC Reg BI
Disclosure Obligation	Detailed disclosures about the scope and terms of the relationship with the consumer and the role of the producer in the transaction. Upon request: • A reasonable estimate of the amount of cash compensation to be received • Whether the cash compensation is a one-time or multiple occurrence amount Producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity.	Facts relating to the scope and terms of the relationship with the retail customer, including: • broker, dealer is acting as a broker, dealer with respect to the recommendation • fees and costs that apply to the retail customer's transactions • type and scope of services provided conflicts of interest that are associated with the recommendation.
Documentation Obligation	• Written record of any recommendation and the basis for the recommendation • Consumer-signed statement documenting: ✓ customer's refusal to provide the consumer profile information ✓ customer's understanding of the ramifications of not providing information; and • Consumer signed statement acknowledging transaction when it is not recommended	Risk-Based Approach

Provision	Model #275	SEC Reg BI
Conflict of Interest Obligation	Identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.	Broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to: • Identify disclose or eliminate, all conflicts of interest associated with such recommendations; • Identify and mitigate any conflicts of interest associated with such recommendations that create an to place the interest of the broker, dealer ahead of the interest of the retail customer; • Identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations • Prevent such limitations and associated conflicts of interest from causing the broker, dealer, to make recommendations that place the interest of the broker, dealer ahead of the interest of the retail customer; and • Identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.
Supervision System	Insurer shall establish and maintain a supervision system reasonably designed to achieve the insurer's and its producers' compliance with the regulation.	The broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest.

Harkin Amendment

Section 989J of the Dodd-Frank Act ("Harkin amendment") gives states authority to regulate the sale of fixed indexed annuities when certain conditions are met, including:

- State where the contract is issued or the state where insurer is domiciled, has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's *Suitability in Annuity Transactions Model Regulation* (#275); and

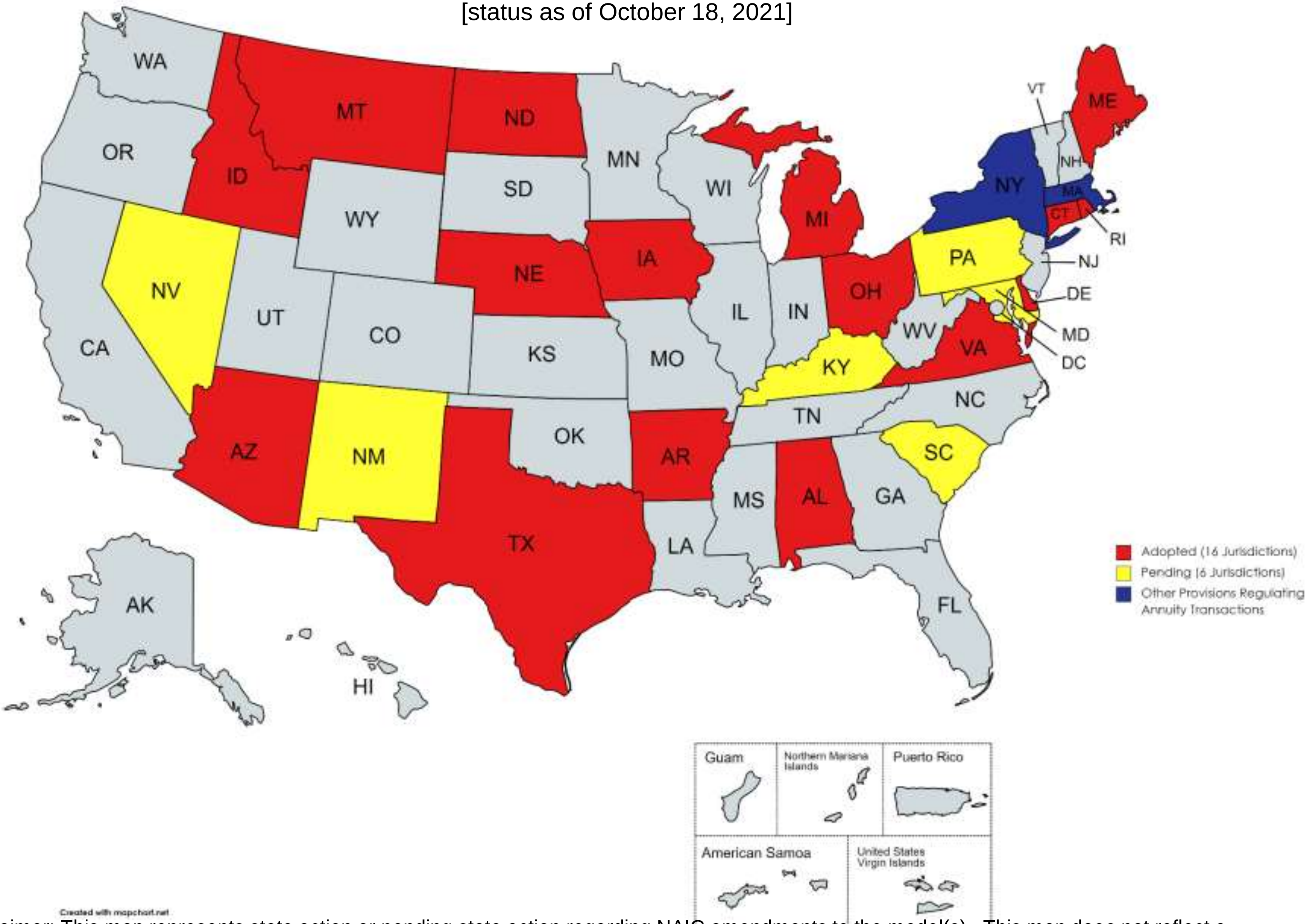
- "Adopts rules that substantially meet or exceed the minimum requirements of any **successor modifications** to the model regulation[]" within 5 years of the adoption by the NAIC.

Harkin Amendment

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Exception: if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and **any successor thereto**," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products.

Implementation of 2020 Revisions to Model #275
Suitability in Annuity Transactions Model Regulation
[status as of October 18, 2021]



Disclaimer: This map represents state action or pending state action regarding NAIC amendments to the model(s). This map does not reflect a determination as to whether the pending or enacted legislation contains all elements of NAIC amendments to the model(s) or whether a state meets any applicable accreditation standards.

State Adoption Map and Legislative Tracking
https://content.naic.org/cmte_a_aswg.htm

Annuity Suitability (A) Working G

content.naic.org/cmte_a_aswg.htm

NAIC

Regulator Industry Consumer Committees Resource Center Insurance Departments About

Annuity Suitability (A) Working Group

Life Insurance and Annuities (A) Committee +

2021 Membership

2021 Adopted Charges:

The **Annuity Suitability (A) Working Group** will:

1. Review and revise, as necessary, the *Suitability in Annuity Transactions Model Regulation* (#275). (COMPLETED)
2. Consider how to promote greater uniformity across NAIC-member jurisdictions

Meeting Materials Exposure Drafts Documents

Calendar

There are no call materials at this time.

STATE IMPLEMENTATION OF 2020 REVISIONS TO SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION (#275)

Legislative Tracking

Note: When viewing the state legislative tracking information in the link above, please be aware the reference to "REGISTER" means "RULE."

State Implementation Map

FAQ Guidance Document

RELATED NAIC PUBLICATIONS

Type here to search

12:24 PM
10/26/2021

Why Should States Adopt Best Interest Model Revisions?

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

- National uniformity is necessary for consistent insurer and producer oversight and for consumer protection.

- The revisions are compatible with the SEC's Regulation Best Interest.

- The Harkin Amendment to the federal Dodd-Frank Act necessitates state adoption for states to retain authority over annuity transactions.

- Consumers need to rely on strong standards to ensure they receive clear and appropriate sales, marketing, and financial advice relating to the purchase and management of life insurance policies or annuity contracts from insurers and insurance producers.

Questions?

Jolie H. Matthews
Senior Health and Life Policy Counsel
jmatthews@naic.org – **202-471-3982**