

Updating the NAIC Annuity “Best Interest” Model Regulation

Presentation by Insured Retirement Institute (IRI)



Introductions

Today's Presenter



Sarah Wood,
Director of State
Policy and Regulatory
Affairs

Presentation Topic: Current Status
of Adoption and Implementation

IRI At-a-Glance

*The leading association for the entire supply chain
of insured retirement strategies*



What is the Current Status?

16 states have currently adopted the recent updates to the Model

8 proposals in the works

And more are expected. We are on track to see adoption or enactment of the Model in at least half the states by year-end.

Current Status, continued.

SEC and FINRA

- ❑ Reg BI and Form CRS in effect
- ❑ SEC and FINRA have issued numerous pieces of guidance to support industry compliance efforts
- ❑ Compliance with Reg BI and Form CRS is top exam priority in 2021
 - Examiners looking for more than good faith efforts to comply
- ❑ SEC Chair Gensler focused primarily on enforcement of Reg BI; Potential enhancements seemingly not imminent
- ❑ FINRA Variable Annuity Suitability Rule (Rule 2330) remains in effect

DOL

- ❑ New PTE for providers of fiduciary investment advice (PTE 2020-02) now in effect
 - Non-enforcement policy in effect through 12/20/21; IRI seeking delay
- ❑ New PTE not viable for independent insurance agents, but PTE 84-24 remains available
- ❑ Overly broad re-interpretation of five-part test remains in place
- ❑ DOL Spring Agenda includes rulemaking on definition of fiduciary investment advice, PTEs
 - Expected to significantly broaden fiduciary definition, impose more stringent conditions in 2020-02, potentially revoke 84-24
- ❑ IRI leading joint trades effort to develop research, messaging, and strategy to support best interest standard, oppose further rulemaking

NAIC / State Insurance Departments

- ❑ New York amended annuity suitability rule in 2019
 - Overturned by Appellate Court in May 2021; Appeal pending
- ❑ Revised Model approved by NAIC in February 2020
 - Safe harbor for compliance with comparable standards
 - Updated producer training required
- ❑ Already in effect in 11 states (AZ, AR, DE, ID, IA, MI, MT, OH, RI, TX, VA); adopted but not yet in effect in five others (AL, CT, ME, NE, ND)
- ❑ Proposals pending in seven states (KY, MD, MS, NM, NV, PA, SC, WI), and under development in several others
- ❑ NAIC continuing to develop FAQs
- ❑ IRI leading joint trades coalition in pursuit of nationwide uniform adoption

State Securities Departments

- ❑ Massachusetts Fiduciary Rule now in effect
- ❑ New Jersey fiduciary proposal on hold until at least end of 2021
 - Unclear whether proposal is a priority for new leadership
- ❑ No movement from Nevada, Maryland, or other states on new fiduciary proposals
- ❑ NASAA conducting multi-phased survey of state securities departments to gauge effectiveness of Reg BI and Form CRS
 - Expected to serve as justification for development of uniform fiduciary model law

How Is Implementation Going?

- 1 Many states adopting the Model **without substantive deviations.**
- 2 **Ease** of adoption and **support** from various stakeholders
- 3 **Alignment** with federal rules/standards.

What Did We Learn?

Challenges

- ⌘ Interpretation of training obligations
- ⌘ Time needed for producers and insurers to implement requirements

Support Efforts

- ✓ NAIC issued FAQs in July 2021; industry trade organizations developed resources to assist regulators
- ✓ Building in implementation lead time within the regulation, consistent with the Model language