



Financial Security...for Life.

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Submitted Electronically

Office of Regulations and Interpretations  
Office of Exemption Determinations  
Employee Benefits Security Administration  
Attn: Conflict of Interest Rule, Room N-5655; D-11850; D-11712  
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**Subject: Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice (RIN 1210-AB32); Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters (RIN 1210-ZA25); and Proposed Best Interest Contract Exemption (RIN 1210-ZA25)**

Greetings:

On behalf of the American Council of Life Insurers (“ACLI”)<sup>1</sup>, we offer comment on the Department of Labor’s (“Department”) proposed rule and prohibited transaction exemptions promulgated under Sections 3(21)(A)(ii) and 2510.3-21 of the Employee Retirement Income Security Act (“ERISA”)(collectively, the “Proposal”). The Proposal would cause irreparable harm to small balance retirement plan investors, including many middle and lower income investors. More specifically, the Proposal would effectively limit or deny access to guaranteed income products that are increasingly important to millions of Americans who no longer have access to a traditional pension.

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<sup>1</sup> The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 284 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. ACLI member companies offer insurance contracts and other investment products and services to qualified retirement plans, including defined benefit pension and 401(k) arrangements, and to individuals through individual retirement arrangements (IRAs) or on a non-qualified basis. ACLI member companies also are employer sponsors of retirement plans for their own employees.

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  - Ensure that providers, plan sponsors, plan fiduciaries, and IRA owners retain the freedom to define the nature and scope of their relationship.
  - Preserve and expand the investment education principles of Interpretive Bulletin 96-1 which have served participants well for nearly 20 years.
  - Preserve reasonable and customary commission-based practices with an exemption that offers compliance certainty and avoids increased costs.
  - Be protective of the interests of savers and retirees through a workable rule that not only addresses conflicts of interests, but supports and encourages key educational activities when interests align.
  - Encourage access to a savings plan at work and provide the opportunity to learn about and access annuities, the sole means available in the market place by which retirees can secure income for life.
  - Ensure access to important workplace benefits such as life, disability income, long-term care, and other non-medical insurance products.
  - Enable insurers and their distribution partners to engage small business owners to encourage them to establish savings plans for employees.
  - Encourage access to annuities for workers and retirees so that they may save and secure additional guaranteed lifetime income beyond Social Security.
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## *Introduction and Key Principles*

ACLI has long supported responsible regulation that brings confidence to the marketplace. We believe such regulation is a win-win, a win for consumers and a win for ACLI member companies, who take pride in offering savings and investment services and retirement income solutions to millions of Americans. However laudable the goal of this particular rulemaking, care must be taken to ensure that unintended consequences do not serve to deprive or limit access to the products and services Americans need for meaningful savings and a secure retirement. Caution is particularly appropriate when considering rules that will significantly limit access to investment information, assistance, education and guidance, as well as to important income protection products. While the Department estimates – for purposes of the Proposal - investor losses due to conflicts at \$21 billion per year (somewhat higher than the Council of Economic Advisor’s estimate of \$17 billion per year), investor losses associated with an absence of professional assistance, according to the Department’s own figures, were estimated to be \$114 billion in 2010 alone,<sup>2</sup> almost seven times greater per year. Without significant changes to the Department’s Proposal, ACLI is concerned that there will be a dramatic decrease in:

- access to guaranteed lifetime income solutions;
- the number of small business retirement plans;
- access to important workplace benefits such as life, disability income, long-term care, and other non-medical insurance products; and
- investment and distribution education and guidance.

These results will come at a cost to plan sponsors, participants, beneficiaries and IRA owners far in excess of the Department’s estimates. In summary, unintended consequences should – and do – matter.

ACLI supports rulemaking that is consistent with the Department’s statutory authority, accommodates the Department’s interest in minimizing the impact of conflicts of interest on plans, participants and IRA owners, and avoids significant disruptions in access to saving and retirement products and services. At a minimum, a rule defining “fiduciary” status for purposes of investment advice should:

- Ensure that service providers, financial professionals, plan sponsors, plan fiduciaries, plan participants and IRA owners retain the freedom to define the nature and scope of their relationships, including the freedom to sell, purchase, negotiate and contract without a regulatory presumption of a fiduciary relationship and without codifying assumptions regarding the assumed competence – or lack thereof – of any group of plan fiduciaries or the general public.
- Preserve reasonable and customary commission-based practices with an exemption that offers compliance certainty and avoids increased costs.
- Narrowly focus on persons who provide advice regarding investments.

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<sup>2</sup> 76 Fed Reg 66151 (October 25, 2011). While the Department estimated reductions in that figure resulting from advice provided pursuant to the statutory exemption under ERISA section 408(g) and Internal Revenue Code section 4975(f)(8), the fact is that the exemption is not relied upon heavily, therefore any likely reductions in investor losses attributable to their own errors would be marginal.

- Preserve and expand the current rules regarding investment education in the Department's Interpretive Bulletin 96-1, the benefits of which were recognized by the Department in 2010 and have served participants well for nearly 20 years.

To protect the interests of savers and retirees, there must be a workable rule that not only addresses conflicts of interests, but supports and encourages activities when interests align. For example, the insurance industry and its distribution partners encourage greater savings, which can help Americans secure life-long income. Both industry and the saver benefit when that goal is achieved. This *alignment of interest* must be fostered, not encumbered. Likewise, retirees need a variety of guaranteed lifetime income solutions from which to choose the level of security they desire and for which they are willing to pay. Rules and exemptions should not frustrate, through expressed limitations or ambiguity and uncertainty, this alignment of interests. To do otherwise would harm, not help, the interests of savers and retirees.

With so many Americans reaching retirement age each day and given the decline of traditional employer-sponsored pension plans, now more than ever, seniors need the income protection available in annuities and other guaranteed lifetime income products offered by America's life insurance industry. Many people first learn of the benefits of annuities from a life insurance agent or broker. Continued access to information and education regarding annuities is consistent with the Administration's efforts to facilitate access to lifetime income. However, if the Department's fiduciary proposal moves forward without substantial changes, Americans' understanding of and access to guaranteed lifetime income in retirement will be effectively limited, and *longstanding and customary* practices involving retirement plan and IRA guidance will be prohibited.

Annuities are the sole means available in the market place today by which retirees can secure income for life. With fewer and fewer workers eligible for workplace pensions, there is a greater need to save for retirement in 401(k) and other defined contribution plans as well as IRAs. Annuities serve as a means to convert these savings into a personal pension to supplement Social Security. To ensure that Americans have a secure retirement, it is of utmost importance that they have access to a savings plan at work and the opportunity to learn about and access annuities. Without substantive changes, ACLI is seriously concerned that, under the proposal, insurers and their distribution partners will no longer be able to engage small business owners to encourage them to establish savings plans for employees. Without access, workers are less likely to save and secure additional guaranteed lifetime income beyond Social Security.

Annuities are not well known by the general public. Academics write of the "annuity puzzle," i.e., why so few retirees annuitize defined contribution benefits when annuities provide much needed income protections. Research shows that people have difficulty placing a value on annuities.<sup>3</sup> They underestimate the value of the annuity when considering a purchase. This adds to the challenge faced by insurers, agents and brokers. They must introduce savers and retirees to annuities, help them to understand the value proposition, and educate them on the variety of annuities available with features that can address concerns regarding liquidity, inflation, premature death, etc. Given the need for a high level of education about annuities and the buy and hold nature of guaranteed lifetime income products, it is important that the Department recognize that these elements led to the customary compensation practices in place which differ from those that govern the sale of other types of investments or investment advisory and management services. ACLI members are gravely concerned that the Proposal, as currently drafted, will drive distributors to level compensation structures that will no longer appropriately compensate agents for the sale of annuities which in turn will result in less access by the public to these important retirement security products.

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<sup>3</sup> "Cognitive Constraints on Valuing Annuities" by Brown, Kapteyn, Luttmer, Mitchell – Pension Research Council October 2014.

When writing rules, agencies are required to “strike the right balance” and develop more affordable, less intrusive rules to achieve the same ends, giving careful consideration to benefits and costs. While the Proposal mentions annuities 172 times, acknowledges that “31 percent of IRAs include investments in annuities,” and notes that “insurance companies [will] be significantly affected by the proposal,” the cost-benefit analysis fails to examine the impact of the Proposal on insurers, the annuity market, or on the availability of lifetime income.

Finally, it is well recognized that workplace saving programs play a critical role in retirement preparedness. As leading providers in the small plan formation marketplace, life insurers are particularly concerned that this Proposal would impede the important policy goal of expanding small plan coverage. The Proposal negatively impacts small plan formation by restricting sales activities that encourage small business owners (those with less than 100 employees) to start, maintain, or improve their employee benefit plans. The DOL has limited the “sales exception” to certain large plans, while impeding the sale of products and services to small businesses. Only 50 percent of workers employed in small businesses have access to a workplace retirement plan. There needs to be greater incentives for these small businesses to start and maintain retirement plans—not new barriers.

### ***The Fiduciary Proposal***

We share the Department’s interest in seeing that plan sponsors, plan participants and IRA owners receive advice that is in their best interest. At the same time, we are concerned that, in its pursuit of this objective, the Department has crafted a proposal that creates risks and uncertainties for insurers, their agents, and brokers that may result in less, not more, investment and annuity information. Our comments are consistent with the Department’s objective of protecting retirement investors while avoiding unnecessary disruption and negative impacts to plans, participants and individuals.

Plans, plan participants and beneficiaries, IRA owners and small business owners need a financial services market place that engages them and assists them in saving and investing and in addressing critical needs for income in retirement. An unnecessarily narrow focus on conflicts of interest oversimplifies the massive undertaking this nation faces in getting workers to save and retirees to secure guaranteed lifetime income. Insurers, agents, brokers, and savers/investors need to have confidence that a fiduciary standard will not disallow the reasonable and customary payment of sales commissions and other traditional forms of distribution-related compensation nor expose them to unnecessary litigation. This is required to ensure that American retirees maintain free and unfettered access to educated and committed financial intermediaries. Parties engaged in transactions with ERISA plans and IRAs need clear, unambiguous rules by which to determine their duties and obligations in order for them to effectively and confidently serve the marketplace and to ensure that plans, plan participants, and IRA owners continue to have access to a broad range of insurance products and services, investment advice and educational services. We offer these comments to assist in the development of such rules. However, given the voluminous and complex nature of the Proposal, we intend to continue our review and may submit additional or supplemental comments to the Department.

- I. ACLI members are concerned that the definition of “advice” is unnecessarily broad and provides the following recommendations for the Department’s consideration.**
  - A. The Department must clarify that advice “individualized to the advice recipient” is not simply personalized, but is advice that implicates relationships of trust and expectations of impartiality, as described in the Proposal.**

The current regulatory definition provides that, in order to be considered a fiduciary by nature of providing investment advice, a person must “render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies



or strategy, overall portfolio composition, or diversification of plan assets.”<sup>4</sup> The degree of clarity in the existing definition has allowed the investment advice community to draw clear distinctions between advice that may be personalized, but not “individualized to” an advice recipient for purposes of ERISA. This would include general investment communications delivered via targeted sales calls, individually addressed marketing materials, or brochures selected and distributed in an effort to match informational content with a particular investor’s potential needs. Simply adding a salutation to the beginning of a letter should not be deemed to be “individualized” although it might be considered “personalized.” Instead, “individualized to the advice recipient” should be read to include recommendations that take into account a particular individual’s unique circumstances. It would be helpful if the Department clarified this interpretation in the preamble of the regulation.

In order to clarify the Department’s intent, we recommend adopting language outlined in the preamble to describe the relationships that the Department seeks to cover – specifically, those relationships that create an expectation of trust between the financial professional and the investor. Section I(G) includes suggested changes to the text of the Proposal to address this point.

**B. “Directed to” is not synonymous with “individualized” advice and should be eliminated from the definition.**

We believe the “directed to” concept adds complexity and ambiguity to investment advice determinations that will only serve to significantly limit one-on-one communications between providers and potential or existing customers. The Department itself cited studies that show historically in-person engagements may produce benefits that are not afforded by similar on-line services.<sup>5</sup> The ACLI sees no benefit to plan sponsors, plan participants or IRA owners of discouraging one-on-one or other personal contacts given their obvious value toward understanding products, services, and choices.

The investment advice industry has long functioned under the premise that “investment advice” that creates a trusted relationship between the financial professional and an investor must be customized and deemed suitable for and based on the needs of the specific investor. The Department’s decision to capture communications that are merely “directed to” the recipient upends traditional passive marketing activity that is often the primary way by which investors become aware of their product and service options. In effect, the inclusion of “directed to” serves to create a presumption of investment advice/fiduciary status, in circumstances when neither was intended, expected or agreed upon. Further, the lack of clarity within the rule will have a chilling effect on all types of marketing activity, because the line between traditional marketing and fiduciary investment advice cannot be determined in advance with any degree of certainty.

Directed communications, by definition, are not “individualized” communications, and should not be treated as individualized for purposes of determining ERISA fiduciary status. For instance, directed mailings, general advertising focused in specialty markets, group communications that are focused on the needs of investors of a particular age, marital status, or demographic region, and general investment seminars open to members of a particular organization or community are all advice communications that may be “directed to” a recipient, but should not be treated as an attempt to offer fiduciary investment advice.

Accordingly, the definition should be limited to fiduciary advice that is truly “individualized” and understood to be “individualized” by the parties. Again, the “directed to” language should be eliminated. Section I(G) includes suggested changes to the text of the Proposal to address this point.

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<sup>4</sup> 42 CFR 2510.3-21(c)(1)(ii)(B)

<sup>5</sup> 76 Fed Reg 66155 (October 25, 2011)



**C. The regulatory definition must clearly link fiduciary advice with a contemporaneous transaction.**

With the Department's decision to significantly broaden the definition of "fiduciary", including the elimination of certain tests that served to place parameters around the advice being rendered, such as the "regular basis" requirement, ACLI members are concerned that advice, when provided, may be construed by a plan sponsor, participant or IRA owner as on-going in nature, rather than constrained by context, events and/or time. Typically, a recommendation to engage in or refrain from taking a particular course of action is based on a variety of factors then prevailing. A financial professional should not be liable for transactions that occur after a change in the relevant factors (e.g., market conditions, interest rates). In this regard, we recommend that the Department make clear that, as part of an agreement or understanding, the parties are free to define the period to which the advice applies. We also recommend that, in the absence of any such agreement or understanding, there is presumption that the advice will be acted upon within a time frame that is reasonably contemporaneous in light of the type of recommendation given with the rendering of the advice, in the absence of facts to the contrary.

**D. Clarify agreements, arrangements and understandings are to be mutual.**

A written or verbal agreement is, by its nature, mutual. So too is a written or verbal arrangement. However, an understanding may not necessarily be mutual. We suggest that "written or verbal" also affix to "arrangement" and that "mutual" be a condition of any understanding. Section I(G) includes suggested changes to the text of the Proposal to address this point.

**E. The regulatory definition must more closely align itself with the statute and past practice in focusing on activities which are "investment" in nature.**

ERISA section 3(21)(a)(ii) states that a person is an investment advice fiduciary only to the extent that he provides "investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan . . .". The functional nature of this statutory definition limits the Department's regulatory interpretation to certain activities that relate to the investment or management of assets. While the term "investment" has a number of meanings, to stay within the authority granted by Congress, the rule should be limited to advice regarding the investment of plan assets.

The term "investment" should not include a contract issued by an insurance company for the provision of benefits under a welfare benefit plan such as a life, disability income, or long term care contract. Investment activities generally involve an expectation of achieving a profit. Thus, while these insurance contracts may be an investment as that term is used to describe a good use of resources, they are not investments as that term is used in the phrase "investment advice" under ERISA.

In addition, a recommendation regarding a person who may be willing to serve and might be hired as an investment advice fiduciary is not a recommendation regarding the investment of plan assets. Whether or not such person is to be "entrusted with investment authority" is a determination to be made by another party. The Department should not discourage parties-in-interest from helping plan fiduciaries identify other possible service providers.

Also, absent specific advice regarding investments, a recommendation regarding the distribution of benefits is not investment advice. For example, a recommendation from a party-in-interest regarding the availability of a hardship withdrawal to a homeowner in need of funds to make repairs to her home after a major storm should not be construed as investment advice. While distributions do require investment activity, when investments are disposed to fund the proceeds of a withdrawal either in accordance with the terms of the plan or at the direction of the investor without a recommendation to do so, no "investment advice" has occurred.

There is no indication that Congress intended or directed that the Department extend its regulatory interpretation beyond advice regarding an investor's portfolio or investment products. However, the Department's current revision of the definition of investment advice appears to do just that, potentially capturing discussions relating to the purchase of products and activity never intended to be captured by this rule. This expansion of the statute not only is inconsistent with the Department's interpretation of "investment advice" for any other purpose under ERISA, it is also a considerable expansion of the statutory language.

Finally, while we understand that a person may, through or together with an affiliate of such person, "indirectly" represent or acknowledge that it is acting as a fiduciary, we cannot understand how one would indirectly render investment advice. The Department does not explain the application of the phrase "through or together with an affiliate." Fiduciary status should not apply to persons that are not directly involved with the provision of advice. There is no reason why the status quo should change. ERISA §(3(21)) does not contemplate "indirect" investment advice.

Section I(G) includes suggested changes to the text of the Proposal to address these points.

**F. The regulatory definition should be revised to exclude welfare benefit plans.**

Furthermore, ACLI recommends that the Department exclude welfare benefit plans from this rule, preserving both the current rule and prohibited transaction exemptions pending further analysis. Regarding welfare benefit plans, we note the lack of any analysis or explanation in the preamble to the Proposal regarding the application of law or the Proposal to these plans, an absence of any analysis of the impact of the Proposal on these plans in the Regulatory Impact Analysis, nor an attempt to conform the proposed new and amended prohibited transaction exemptions to provide clear exemptive relief to transactions involving these plans. Should the Department decide to act on rulemaking regarding these plans, we ask that the Department: (1) clearly identify the statutory authority to capture recommendations regarding the purchase of a contract to provide welfare benefits under the definition of "fiduciary investment advice" and seek public comment on its position; (2) afford the public an opportunity to comment on its regulatory impact analysis regarding the impact of such rulemaking to welfare benefit plans; and (3) propose prohibited transaction exemptions or appropriate amendments that conform to transactions involving welfare benefit plans. Section I(G) includes suggested changes to the text of the Proposal to address this recommendation.

**G. Taken together, our suggestions in Section I would revise the base definition and add two new terms to clarify the application of the rule as follows:**

***§ 2510.3-21 Definition of "Fiduciary."***

*(a) Investment advice. For purposes of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (Act) and section 4975(e)(3)(B) of the Internal Revenue Code (Code), except as provided in paragraph (b) and (g) of this section, a person renders investment advice with respect to moneys or other property of a plan or IRA described in paragraph (f)(2) of this section if—*

*(1) Such person provides, directly to ~~an investor a plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner~~ the following types of investment advice, whether one time or ongoing, in exchange for a fee or other compensation, whether direct or indirect:*

*(i) A recommendation as to the advisability of acquiring, holding, disposing or exchanging ~~investments securities or other property~~, including a recommendation to take a distribution of benefits ~~or that includes~~ a recommendation as to the investment of ~~assets securities or other property~~ to be rolled over or otherwise distributed from the plan or IRA;*

~~(ii) A recommendation as to the discretionary management of investments by a party other than the party making the recommendation securities or other property, including recommendations as to the management of moneyssecurities or other property to be rolled over or otherwise distributed from the plan or IRA;~~

~~(iii) An appraisal, fairness opinion, or similar statement whether verbal or written concerning the value of investmentsecurities or other property if provided in connection with a specific transaction or transactions involving the acquisition, disposition, or exchange, of such investmentsecurities or other property by the plan or IRA;~~

~~(iv) A recommendation of a person who is also going to receive a fee or other compensation for providing any of the types of advice described in paragraphs (i) through (iii); and~~

~~(2) Such person, either directly or indirectly (e.g., through or together with any affiliate),—~~

~~(i) Represents or acknowledges, either directly or indirectly (e.g., through or together with any affiliate), that it is acting as a fiduciary within the meaning of the Act with respect to the investment advice described in paragraph (a)(1) of this section; or~~

~~(ii) Renders the investment advice pursuant to a written or verbal agreement, or arrangement, or mutual understanding that the advice is individualized or that such advice is specifically directed to, the advice recipient for consideration in making investment or management decisions with respect to securities or other property of the plan or IRA, to meet the specific investment goals of the investor, and is provided at the request of the investor pursuant to the agreement, arrangement, or understanding.~~

~~(f) Definitions. For purposes of this section –~~

~~(2)(i) “Plan” means any employee benefit plan described in section 3(32) of the Act ....~~

~~(9) “Investor” means a plan, plan fiduciary (with discretionary authority over plan assets), plan participant or beneficiary, IRA, or IRA owner.~~

~~(10) “Investments” means securities, insurance and annuity contracts, property or other financial instruments held by a plan or IRA. The term “investments” does not include any contract issued by an insurance company for the provision of benefits under a plan described in section 3(1) of the Act.~~

~~(g) Welfare benefit plans. For purposes of section 3(21)(A)(ii) of the Act, with respect to a plan described in section 3(1) of the Act, the definition of “fiduciary” set forth in §2510.3-21 as filed with the Federal Register on October 28, 1975 shall apply.~~

**II. ACLI members are concerned that the proposed exceptions or “carve-outs” are unnecessarily narrow, inconsistent with policies to expand retirement coverage and savings, and generally disruptive to the marketplace, without any discernible economic or other net benefit to consumers.**

According to the Proposal, the revised definition of investment advice fiduciary is subject to certain specific exceptions (referred to in the Department’s Proposal as ‘carve-outs’) for communications that are “best understood as non-fiduciary in nature” and that “parties would not ordinarily view as communications characterized by a relationship of trust or impartiality”.<sup>6</sup> However, the proposed exceptions exclude critical details regarding investment activities that are not considered fiduciary in nature, or advance inaccurate assumptions regarding plan and investor activity that erode the efficacy of the exception. Furthermore, in order to preserve access to traditional assistance for retirement investors with smaller accounts, several specific exceptions must be included in the final rule.

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<sup>6</sup> 21929

## A. The counter-party carve-out should be expanded to cover all plans and IRA accounts.

According to the preamble, the purpose of the seller's exception is to "avoid imposing ERISA fiduciary obligations on sales pitches that are part of an arm's length transactions where neither side assumes the counterparty to the plan is acting as an impartial trusted adviser, but the seller is making representations about the value and benefits of proposed deals."<sup>7</sup> The Department's stated purpose recognizes that sales activities naturally include recommendations to purchase and invest in products and services offered by the seller, and that financial institutions such as life insurers and their sales representatives should not be categorized as fiduciaries under ERISA or Code section 4975(e)(3)(B) when they are engaged in selling activities and are clear that they are acting in a sales capacity.

Unfortunately, we do not believe the Department's recognition of the distinction between sales and advice in the preamble or in the Department's prior proposal is adequately reflected in the limited scope of the sellers/counterparty carve-out in the operative language. In fact, rather than recognizing that marketing and sales activities do not constitute advice, the Department appears to start from the premise that those activities traditionally thought of as sales and marketing are tantamount to rendering investment advice— unless such activities meet certain conditions, without regard, to any understanding or agreement on the part of the parties that such activities are in fact sales or marketing. And, to further confuse things, the Department, with no pertinent economic or other analytical support, opts to treat all selling and marketing activities as fiduciary investment advice when that activity is directed to small plans and IRA accounts; again, without regard to any understanding or agreement of the parties to the contrary.

We are concerned that the Department's efforts go far beyond the statute in its interference into practices that are clearly recognized as the sales and marketing of products and services. We also are concerned with the apparent arbitrariness of the Department's framework, as well the supposition that size is a substitute for understanding one's responsibilities under ERISA, even if one is otherwise held accountable for understanding and compliance with the – reporting, disclosure, fiduciary, and prohibited transaction – rules.<sup>8</sup> In essence, the Proposal creates a new second-class plan fiduciary for small plans and calls into question whether the Department would support a lower standard of care for small plan fiduciaries generally given this assumption that these employers lack sophistication. Similarly, we are concerned with the Department's assumption, again with little, if any, support, that IRA owners generally are not sufficiently sophisticated to distinguish advice from sales and marketing. A simplified disclosure describing the sales function would be a much better option than forcing financial professionals to abandon the small balance investor. The approach pursued by the Department in the Proposal effectively eliminates for all plan sponsors, participants, IRA owners, the ability to acknowledge and define the parameters of their engagements with third parties. We believe this, and other aspects, of the Proposal go far beyond what Congress intended and far beyond what can be construed as a reasonable reading of the statute.

Most importantly, we are concerned that the Proposal will unnecessarily complicate interactions with all plans, as well as increase operational and compliance costs for providers and their customers. Further, the inability to conduct traditional sales and marketing efforts to small plans will significantly impede, if not preclude, efforts to close the retirement coverage gap, which is particularly acute among small employers. As the Department is aware, millions of working Americans do not currently have retirement savings opportunities through their workplace. The Department's Proposal will significantly increase costs and risks attendant to reaching out to the small employer community and, in our opinion, further exacerbate private-sector efforts to bring retirement savings opportunities to all working

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<sup>7</sup> 80 FR 21941.

<sup>8</sup> Under the proposal, the exception may apply to sales activities relating to an employer's 120 participant 401(k) plan, but not the employer's 65 participant defined benefit plan or 70 participant frozen welfare benefit arrangement. The exception may apply to sales activities relating to a \$100 million dollar defined benefit plan trust, but not to sales of insurance contracts to a large unfunded welfare benefit plan.

Americans. For many of the same reasons, the Department's limits on sales and marketing to new and existing IRA owners will, in our view, increase the risk of leakage, thereby reducing retirement savings. An inability to reach out to potential and existing IRA owners in an efficient and cost effective way will leave far too many individuals and retirees on their own to gather information and materials about their options, while being subject to potentially competing demands from family and others to use accumulated savings for non-retirement purposes. Marketing and sales activities serve to educate consumers about their choices and ensure competitive pricing of products and services.

We recommend that the sellers/counterparty exception be modified to:

- *Include sales to any investor.* The definition should provide that, without regard to plan size or whether the engagement involves a plan participant or IRA owner, in the absence of a mutual understanding or agreement that products or services are being offered or marketed in a fiduciary capacity, such offerings or products shall be treated as sales/marketing not covered by the "advice" definition. Plan fiduciaries are, by law – and without regard to the size of their plan or the amount of assets within the plan –, required to act prudently and in the interest of the plan's participants and beneficiaries. We believe that such standard imposes an obligation – and not a particularly difficult one – to ascertain the nature of the relationships in which they engage, including distinguishing a sales activity from a fiduciary activity (with respect to which they may have co-fiduciary liability). In the case of a plan participant considering a rollover or IRA owners generally, they too are expected to be cognizant of the rules and tax considerations governing IRAs and, in many cases, have reviewed the IRA marketplace in conjunction with selection an IRA with investments and fees that meet their criteria. Unlike plan participants, IRA owners have the flexibility – and therefore an inherent protection – to transfer their assets to a competing IRA if and when they become dissatisfied with investments and/or services. The knowledge and understanding of IRA owners should not be discounted by the Department in the absence of an empirical assessment of IRA owners' capabilities and the impacts on the Department's regulations on those owners.
- *Remove the requirement to obtain a written representation when acting in a sales capacity.* The definition should be revised to eliminate any requirement for a seller/counterparty to obtain written representations regarding the capacity in which a plan fiduciary is acting (or regarding plan size, assets – see above) or the plan fiduciary's understanding that the seller/counterparty is not acting in a fiduciary capacity. Such representations are not, and should not be, part of pre-sales or sales discussions. Starting any relationship with an explanation that the seller is not permitted to discuss product or service offerings until written representations are obtained, that the individual is in a position to act and that she is sufficiently sophisticated to understand that the seller is a seller, not a fiduciary – may be received as unwelcomed and condescending. Despite the Department's perception, albeit unfounded, that no one is really capable of distinguishing sales from fiduciary activities, we believe such confusion has not been an issue of any measurable degree and that this requirement should be eliminated.
- *Remove the burden of proof from the seller.* The definition should be revised to eliminate putting a seller/counterparty in the position of having to establish/prove that any given fiduciary has sufficient expertise to evaluate the transaction and determine the prudence of the transaction with respect to the plan. We believe if a plan fiduciary is acting as such in connection with a sales or marketing engagement, it is reasonable for any seller/counterparty to assume that the fiduciary understands their duties under ERISA (or the in case of an IRA account owners, their right to act on information they determine to be in their best interest). Moreover, the Department does not provide guidance on how one could possibly discharge such an obligation with any degree of certainty. If the Department is intent on a test, we strongly suggest that the requirement be reframed to establish a presumption of competence on the part of a plan fiduciary, in the absence of clear evidence indicating otherwise. In this regard, we note that



even ERISA fiduciaries – directed trustees – are not required to second guess the competence of a named fiduciary absent extraordinary circumstances.<sup>9</sup> Certainly a seller/counterparty should not be held to a higher standard than a directed trustee.

- *Remove any doubt that common pre-sale activities could be considered fiduciary advice.* The definition should clarify that pre-sales activities, such as responses to RFP's and similar solicitations in which a seller/counterparty is not initiating an action, but rather is providing information regarding products and services in the context of a request, the parameters of which are defined by a plan fiduciary or IRA owner constitute activities covered by the sale/counterparty exception.

In the alternative, the current seller's carve-out should be eliminated in favor of a carve-out that requires the seller to fairly inform the investor that: (A) such person is not undertaking to provide impartial financial advice (i.e., not acting as a fiduciary for purposes of ERISA); and (B) such person has a financial interest in the matter. This approach achieves the Department's stated goals without codifying assumptions regarding the assumed competence – or lack thereof – of any group of plan fiduciaries or the general public.

ACLI recommends the following revision to the text of the Proposal.

*“§ 2510.3-21(b)(1)(i) Counterparties to the investor -- In such person's capacity as a counterparty (or representative of a counterparty) to an investor, the person provides advice to an investor who is independent of such person and who exercises authority or control with respect to the management or disposition of investments held by a plan or IRA, with respect to an arm's length transaction, if, prior to providing any recommendation with respect to the transaction, such person has not acknowledged in writing that it is acting as a fiduciary (within the meaning of this subsection) with respect to the transaction and the person does not receive a specific separate advisory fee for such recommendation; such person fairly informs the investor that: (A) such person is not undertaking to provide impartial financial advice; and (B) such person has a financial interest in the matter.”*

**B. The platform carve-out should clarify that an annuity contract is a “platform or similar mechanism” and should be extended to apply to IRAs.**

As with other carve-outs proposed by the Department, the platform carve-out is “designed to draw an appropriate line between fiduciary and non-fiduciary communications, consistent with the text and purpose of the statutory provisions.” The platform carve-out appears to be intended to allow platform providers who provide access to investments through a retirement plan platform and help plan fiduciaries select or monitor investment alternatives perform those services without triggering fiduciary status.

The platform provider exception is made available to individuals who market and make available “securities or other property through a platform or similar mechanism”. However, the carve-out stops short of defining “other property” or a “similar mechanism” that might be an appropriate vehicle for the carve-out. While our members presume that annuity contracts are a “platform or similar mechanism” for purposes of the carve-out, for the avoidance of doubt, the Department should make this clear. Failure to clarify this point would place insurance companies, the sole manufacturers of variable annuity products, at a serious competitive disadvantage with regard to other financial institutions in the retirement plan market.

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<sup>9</sup> Field Assistance Bulletin 2004-03 (December 17, 2004)

The Department requested comments on whether the scope of the platform provider exception should be limited to large plans similar to the scope of the seller's exception. ACLI recommends that this exception apply to all plans, regardless of plan size, as currently provided in the Proposal. Adequate protection is provided to small plans due to the disclosures that are required of providers relying on this exception.

Furthermore, while the preamble suggests that the "platform" carve-out is available for a platform that has preset investment options, this is not entirely evident from the text. Many platform providers offer participant-directed plans platforms with pre-selected investments, chosen without regard to the individualized needs of any particular plan or plan participant. Since there is no inherent conflict in the selection of these standardized investment platforms, they should be explicitly covered by the carve-out. Additionally, the carve-out should make clear that the platform can include products such as annuity contracts, including one or more deferred annuities and/or qualified longevity annuity contracts or "QLACs."

ACLI further suggests that where a provider is merely offering a platform of predefined investment options, the offering of such platforms or platform choices, like sales, should not be treated as advice. In such situations, the provider is merely offering a non-individualized platform of investment options from which an IRA owner can choose or monitor on a take it or leave it basis. For this reason, ACLI also supports extending the selection and monitoring exception in order to ensure that providers can, without assuming fiduciary liability, be responsive to an IRA owners request for investments meeting specific objective criteria specified by the IRA owner. The fact is that IRA owners can only benefit from information – and the ability to compare products and services – in a competitive marketplace. The Department should be encouraging and facilitating IRA owner access to this information, not, as under the Proposal, creating impediments to affording IRA owners options for enhancing their retirement savings.

ACLI members therefore recommend the following change to 2510.3-21(b)(3) and (4):

*(3) Platform providers. The person merely markets and makes available to an Investor, without regard to the individualized needs of the Investor, investments through a platform or similar mechanism (which may include one or more annuity contracts) from which an Investor may select or monitor investment alternatives offered without regard to the individualized needs of the Investor, if the person discloses in writing to the Investor that the person is not undertaking to provide impartial investment advice or to give advice in a fiduciary capacity.*

*(4) Selection and monitoring assistance. In connection with the activities described in (b)(3) of this section ~~with respect to an employee benefit plan (as described in section 3(3) of the Act)~~, the person –*

Note that the language above assumes the Department will include the definition of "Investments" offered in Section I(G) above. If not, we ask that the phrase "insurance and annuity contracts" be included along with "securities, or other property."

**C. The Proposal should include an exception for financial professional responses to proposal requests.**

Under the Proposal, any communication that constitutes a "recommendation" falls within the scope of fiduciary investment advice. A "recommendation" is defined as a communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the advice recipient engage in or refrain from taking a particular course of action.<sup>10</sup> While ACLI members

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<sup>10</sup> 80 Fed. Reg. at 21960.



appreciate the opportunity to offer further comment on the appropriateness of this definition, at base, it is currently drafted broadly enough to require several revisions to protect customary marketing practices. For instance, insurance companies routinely market themselves in response to requests for proposal which are, by definition, intended to encourage plan sponsors to engage in a “particular course of action”. In some cases, a response to a request for proposal may be binding if accepted. It appears that such responses would be considered “recommendations” – and by extension, investment advice – under the current definition. The plan size and asset restrictions currently made part of the seller’s exception do not rectify this inadvertent fiduciary problem. While there is an indication in the preamble that a response to a request for a proposal is not fiduciary advice, members seek a specific carve-out for requests for proposals.

Such carve-out could be worded as follows:

“(X) *Certain Proposal Responses and Related Activity. The person merely markets and makes available to an employee benefit plan (as described in section 3(3) of the Act), informational, marketing or similar materials at the request of a plan fiduciary, in order to encourage a plan fiduciary to engage the services of the adviser and/or an affiliate, irrespective of whether such materials or information are specifically individualized or directed to the plan or identify individual offered investment alternatives.*”

#### **D. The education carve-out should be amended.**

At the outset, we wish to commend the Department for recognizing the importance of retirement-related materials and programs and extending the principles of Interpretive Bulletin (IB) 96-1 to encompass such as part of the proposed rule. With 10,000 individuals reaching retirement age every day, the importance of helping individuals prepare for their retirement years is of critical importance and by clarifying that many activities designed to assist them do not constitute fiduciary investment advice is, in our view, a major step forward.

However, while taking a step forward in encouraging and facilitating the education of plan participants, the Department simultaneously took a major step backward in the area of investment education. For almost 20 years, the principles of IB 96-1 have served to afford participants access to meaningful investment-related educational materials and programs. The value and benefits of IB 96-1 were evident in the Department’s 2010 effort to modify the “fiduciary” definition. In that proposal, the Department could not have been clearer in its recognition of the importance of IB 96-1 by preserving IB 96-1 in its entirety and without change. In this Proposal, however, the Department takes the position that any reference of investments or options in conjunction with asset allocation models or other materials constitute “advice.” Not only a major change to well-established and relied upon guidelines that have proved valuable to millions of plan participants, but change that appears wholly premised on speculation (from a GAO report) that some participants “may” or “might” believe such references constitute advice – despite representations to the contrary or that some participants “may” or “might” not understand – despite explanations – that other investments might be available to them. With the proposed change, the Department has effectively shifted the obligation to populate asset allocation models to the plan participant, who for a wide variety of reasons is unlikely to do so, thereby significantly undermining what has been a valuable tool for millions of plan participants.

Participants and IRA owners need more, not less, education on annuities and other distributions options. The education carve-out requirement to avoid specificity regarding the investment or distribution options available under a plan or IRA should be amended to preserve investor education activities that are critical to managing longevity risk and stemming retirement plan leakage. While the Department makes attempts to cover common distribution-related information “including information

relating to annuitizations and other forms of lifetime income payment”<sup>11</sup>, the text of the carve-out falls short of achieving its stated goal.

Interpretive Bulletin (IB) 96-1, as restated and incorporated into a Department’s regulation, acknowledges the important role of financial professionals in providing participants with educational materials without exposing them to potential fiduciary liability. The Proposal’s replacement of IB 96-1 with a carve-out renders it only marginally useful in this regard. Specifically, the Department’s narrowing of the definition of investment education with respect to specific investments makes it less effective, at best, and counterproductive, at worst. Investors will expect that the education received from financial professionals provides them with sufficient information to make informed investment decisions on their own; in fact, this will no longer be case.

The education carve out should extend to participant enrollment services where participants are being enrolled into investments that have been designated by a plan fiduciary who is independent of the party providing the enrollment services, provided that no recommendations of specific investments are made in the course of such enrollment, and in the case of an investment product under the plan, such as an annuity contract, that is distributed in-kind from the plan, whether as an IRA (and thus effectively a rollover) or a non-transferable 401(g) annuity.

ACLI members therefore have specific suggestions for improving this carve-out. Each of these changes fit squarely into the Department’s intent to carve-out “general information that helps an individual assess and understand income needs past retirement and associated risks (e.g. longevity and inflation risk) or explains general methods for the individual to manage those risks both within and outside the plan...”<sup>12</sup>

**1. Distribution guidance should be expanded. For education to be meaningful,** the requirement to avoid specificity on distribution options available under the plan or IRA must be eliminated.

**2. Education regarding features inherent in previously-purchased products should be included in the carve-out.** As the carve-out is currently written, it appears that a plan or an insurer cannot educate a participant or IRA investor about the features of a particular product that has already been purchased. For example, a customer service representative could not educate a policyholder about the decision to annuitize a previously-purchased contract, because that discussion would involve a communication regarding a “specific investment”. Similarly, a customer service representative could not read the terms of the annuity contract to the policy holder, answer routine questions regarding the annuity or restate contract terms or that of a prospectus.

**3. Education as to which investment options fit into various asset classes should be permitted.** Participants and IRA owners need more information about investments, not less. Plan service providers should be permitted to assist the public in classifying investment options into the correct asset class without fear that they are inadvertently providing advice. More importantly, we need to be helpful to plan participants. General information about asset allocation that omits any information about available investment options will only confuse and frustrate participants.

**4. “Anti-cashout” interventions should be included in the carve-out.** Plan service providers have a financial interest that supports the public interest in retaining participant assets in employer sponsored plans and IRAs. Investment education discouraging participants and IRA owners from “cashing out” their accounts, and investment education promoting IRA rollovers

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<sup>11</sup> 80 Fed. Reg. at 21939.

<sup>12</sup> *Id.* at 21944.

(including rollovers into IRAs affiliated with the person providing the education) by participants, owners, and beneficiaries who are and as an alternative to a cash-out must be permitted. Taking an early lump-sum can have a devastating impact on retirement security. Firms should be encouraged to intervene to educate terminated participants about the consequences of taking their savings out to the tax-advantaged retirement system.

With these goals in mind, ACLI members offer the following revisions to the investment education carve-out:

*“(6) Investment education. The person furnishes or makes available any of the following categories of investment-related information and materials described in paragraphs (b)(6)(i) through (iv) of this section to a plan, plan fiduciary, participant or beneficiary,...*

*(ii) General financial, investment and retirement information. Information and materials on financial, investment and retirement matters that do not address specific investment products, specific plan or IRA alternatives or distribution options available to the plan or IRA or to participants (other than a limited menu of options approved by the plan fiduciary or IRA owner), beneficiaries and IRA owners, or specific alternatives or services offered outside the plan or IRA, and inform the plan fiduciary, participant or beneficiary, or IRA owner about—*

*(A) General financial and investment..*

*(iii) Asset allocation models....*

*(C) ~~Such models do not include or identify any specific investment product or specific alternative available under the plan or IRA~~ To the extent that an asset allocation model and related materials identify one or more investment alternatives or products available under the plan or IRA, the model is accompanied by a statement indicating that other investment alternatives having similar risk and return characteristics may be available under the plan or IRA and identifying where information on those investment alternatives may be obtained; and*

*...(v) Anti-cashout information. General methods and strategies that encourage participants to avoid in-service distributions when possible or suggest alternative post-distribution retirement plan savings vehicles designed to preserve retirement savings, including IRAs and similar products.*

### **III. PTE 84-24 must be revised to ensure sufficient exemptive relief for annuities and other insurance contracts.**

In order to allow both plans and IRAs to continue to purchase insurance and annuity contracts in the normal course of business, PTE 84-24 should be expanded to treat variable annuity purchases as covered transactions, and should allow for greater flexibility within the definition of “commission” to allow for traditional forms of adviser compensation. Furthermore, the exemption should clarify that compensation and other possible revenue or profit received by the insurer (rather than the adviser) is not subject to consideration, should provide for relief for existing transactions that rely on the exemption in its current form, and should clarify the Proposal’s definition of a “material conflict” that is subject to disclosure. We ask that the conditions imposed in Section IV with respect to insurance sales be no more cumbersome than those imposed on mutual fund sales. Finally, we suggest edits to clarify the application of PTE 84-24 to IRA transactions.

As proposed, the Department's amendments would revoke PTE 84-24 for advice provided to IRA owners with respect to transactions involving variable annuity contracts and other annuity contracts that constitute securities under federal securities law, as well as transactions involving the purchase of mutual fund shares. According to its Regulatory Impact Analysis, the Department believes that investment advice transactions involving variable annuity contracts and mutual fund shares are so similar to securities transactions that they should occur under the conditions of the BICE.<sup>13</sup> However, the Department's assessment in this regard ignores certain critical risk characteristics of variable annuity contracts that align these contracts more closely with insurance than securities. Thus the Department's failure to include these contracts under the amended PTE is unwarranted and does not contribute to investor protections.

An annuity contract does not convert from an insurance product to a securities product with the addition of a variable investment feature. Variable annuity contracts are not simply securities products; they are first insurance contracts. Contrary to the Department's assertions in the preamble, they do not cease being the latter when they become the former. Instead, a variable annuity combines traditional insurance concepts with certain mutual fund principals to solve two increasingly important problems in retirement planning – rising life expectancy and the declining value of the dollar.<sup>14</sup> Variable annuity contracts share many of the features of a fixed annuity contract, including fixed (general account) option with interest guarantees, mortality-based investment guarantees, retirement income guarantees, and the availability of additional life-contingent withdrawal options. These features are not available in a securities investment. Also unlike an investment in securities, both fixed and variable annuities provide for the liquidation of principal and income actuarially over a lifetime, with the insurance company assuming the risk of miscalculating mortality predictions in computing benefit payments.<sup>15</sup> Whether an annuity contract is fixed or variable, the insurance company still bears the risk of the investor outliving capital. Given that, in practice, both fixed and variable annuity contracts require the company to bear longevity risk, these arrangements are far more similar to each other than to securities investments in any regard. Accordingly, the Department should reconsider the current distinction between these contracts under the amended PTE 84-24, and revise the PTE to cover the sale of all annuity contracts to IRAs.<sup>16</sup>

In addition, the definition of “insurance commissions” under the amended PTE is far too narrow, and should be broadened to include more traditional forms of compensation. Under the Proposal, insurance commissions would be newly defined as commissions paid by the insurance company or any affiliate of the insurance agent, insurance broker, or pension consultant for effecting the purchase or sale of an insurance or annuity contract.<sup>17</sup> It would include renewal fees and trailers, but would prohibit advisers from receiving relief under the PTE for many other traditional revenue sources, such as revenue sharing and administrative and marketing fees, as well as payments from third parties. This revision would prohibit advisers from receiving these types of payments for sales to both plans and to IRA owners.

This is a significant constriction of the protection afforded by the exemption as it has been interpreted for more than 30 years. While ACLI appreciates the Department's attempt to carve certain forms of potentially conflicted revenue sources out of the exemption, defining commissions largely by

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<sup>13</sup> U.S. Department of Labor, “Fiduciary Investment Advice: Regulatory Impact Analysis,” April 14, 2015, p.4, available at <http://www.dol.gov/ebsa/pdf/conflictsofinterestria.pdf>.

<sup>14</sup> Regulation of Variable Annuity Sales: The Aftermath of SEC v. VALIC, 1959 Wash U. Law. Q. 206(1959). Available at [http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=3325&context=law\\_lawreview](http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=3325&context=law_lawreview)

<sup>15</sup> See SEC v. VALIC, 79 S.Ct. 618, \_\_\_ (1959).

<sup>16</sup> Although ACLI members understand that relief for the sale of variable annuity contracts may still be available under the BICE exemption, due to the uncertainties regarding that exemption's “reasonable compensation” requirement, the inability of the industry to access and compile information necessary for the required disclosures, and the general liability risks created for advisers and affiliates under the exemption, the BICE is not a viable option of the sale of these contracts. Please see section \_\_\_ of this comment letter for additional details.

<sup>17</sup> 80 Fed. Reg. 22010, 22020 (April 20, 2015).

indicating what the term excludes, rather than what the term includes, will create an uncertain compliance environment for insurers. In its current form, the amended definition forces advisers to postulate as to the Department's expectations regarding other types of permissible commission sales under an exemption relied upon heavily by the industry. Insurance companies will have no guidance as to whether other basic revenue sources, such as sales incentives that allow advisers to earn credits toward retirement and health benefits and guaranteed income overrides to third parties paid for overseeing adviser activity, remain permissible. For instance, the revised definition would prohibit payments from third parties and payments that result from the underlying investments that are held pursuant to the insurance contract. This prohibition, as it is currently worded, could restrict the sale of annuities entirely, since both variable and fixed annuities generally include an account that has the potential to generate revenue to the insurer.

An inclusive definition of "insurance commission" would be a helpful step toward alleviating these concerns and correcting the practical issues raised by the amended PTE. However, given the complexity of the insurance market and the various methods insurers use to help facilitate distribution, an inclusive definition of commissions should be flexible enough to allow for the various interpretation and terms used to identify permissible compensation sources.

In addition, we ask the Department to confirm that when necessary, Section I(a)(4) of PTE 84-24 covers an insurance company's receipt of the revenue and any profit that is the necessary result of the sale. This is critical for the sales of proprietary annuities by an insurance company, including its employees, and sales by advisers associated with affiliated selling firms. If the insurance company's revenues and profits are not permitted, this exemption will have no utility for proprietary product sales, which we do not believe is the Department's intent.

Furthermore, the Department offers no reason why an exemption that allows for additional traditional forms of compensation, such as revenue sharing, cannot be fashioned to protect investors' rights. A robust disclosure structure that fully and accurately describes any potential conflict associated with variable sources of revenue would reduce disruption in the market and provide for greater choice for investors. To this end, ACLI members assert that the categories of commissions that would align with Congressional directives under ERISA section 408(a) are far broader than simply renewal fees and trailers. We note that these other forms of commissions, including revenue sharing and similar forms of compensation, are already subject to ERISA's reasonable compensation standards through the disclosure regime currently in place pursuant to section 408(b)(2). Specifically, those disclosures require service providers to disclose any compensation paid from the provider to third parties or affiliates acting as subcontractors if paid on a transaction basis. Such disclosures are also required to the extent such compensation is charged directly against the covered plan's investment and reflected in the net asset value of the investment. Given that this compliance structure already drives the types and amount of commissions that can reasonably be paid to financial professionals, there is little to no additional benefit to be gained by using a highly restrictive definition of "insurance commissions" in the proposed amendment to PTE 84-24.

The insurance industry has taken great pains to deliver quality products, compensate financial professionals, and protect the best interests of retirement investors in a manner that complies with ERISA, securities law, FINRA guidance and applicable state law. The ability to protect that revenue from ERISA prohibited transaction laws does not rest with restricting the types of commissions advisers receive. It rests instead with the Department's success in crafting clear, definitive compliance parameters for investment advice fiduciaries that align with the interests of investors – including their interest in the availability of a wide range of annuities and other investment products.

With respect to proprietary sales, the amended PTE must clarify that revenues to the insurer for group annuity recommendations will not be restricted by the revised definition of "insurance commissions." Often, insurance companies will receive various sources of revenue when group annuity



products are offered to plan sponsors by an affiliated or unaffiliated financial professional, including revenue payments from third parties. These payments present no potential conflict, because their receipt by the company does not influence the adviser's recommendations. Because these revenues are not included in the definition of "commissions", it not clear that such revenue would receive the protection of the PTE, even if the revenue does not vary depending on the product chosen by the plan fiduciary. We therefore strongly encourage the Department to add clarifying language to provide for this protection in the final exemption.

The revised exemption also provides no protection for arrangements that currently rely on PTE 84-24. Variable commission sales and sales involving 12b-1 commissions, for instance, would be stripped of the exemption's protection, without immediate recourse for advisers and investors who have relied on the existing interpretation in good faith. If the Department truly seeks to protect customary retirement savings arrangements that have been successfully executed over the past 30 years, the final exemption should provide grandfather protection for existing contracts that currently fall outside of the bounds of the amended PTE.

Regarding the Impartial Conduct Standards, while we agree that disclosure of material conflicts of interest is not only optimal, but absolutely crucial to protecting investor interests, the proposed amendments to PTE 84-24 do not sufficiently define the term "material conflict". Again, further clarification regarding this standard will be critical if the failure to disclose a material conflict of interest will be deemed to be a misleading statement, and will violate a key exemption requirement. To the extent that PTE 84-24 compliance is premised on such an opaque standard, the insurance industry will find it necessary to discontinue relationships that have traditionally relied on the protection of exemption. As a result, investor access to professional advice from highly-regarded financial professionals will be reduced, particularly among IRA owners. There is a risk that an inadvertent failure to disclose something minor, for example the fiduciary's receipt of a minor benefit such as a routine lunch or dinner paid for by the insurance company issuing the insurance or annuity contract, would result in the transaction and all attendant compensation being prohibited and subject to disgorgement and excise taxes. This result would be harmful and wholly disproportionate to any possible harm caused by the inadvertent disclosure failure.

With respect to transactions involving insurance and annuity contracts, Section IV(b)(2) of the proposed PTE 84-24 requires that the "independent fiduciary acknowledge in writing the receipt of the required disclosures . For transactions involving mutual funds, Section IV(c)(2) requires the independent fiduciary to approve the transaction following the receipt of the required disclosures. ACLI asks that these be aligned to require the approval of the transaction without the need for a "written acknowledgement."

While the amendments to PTE 84-24 are characterized as covering transactions involving IRAs, the covered transactions and conditions for relief do not describe IRAs (e.g., the use of the phrase "with plan assets"). This language should be revised to clearly include the assets of an IRA. Likewise, the conditions in Section IV require the engagement of an independent fiduciary. This person should also include an IRA owner or a fiduciary engaged by the IRA owner to act on their behalf.

While ACLI members appreciate the certainty that a definition brings to the existing exemption, significant amendments will be necessary in order to make the exemption a viable option for the insurance industry going forward.

Accordingly, ACLI recommends the following changes to the text of the exemption in its proposed form:

Revise the phrase "*with plan assets*" to read "*with plan or IRA assets*" as it appears in Section I(a)(1)-(4).

Revise each instance the phrase “*independent fiduciary*” appears in Section IV to read “*independent fiduciary or IRA owner.*”

Revise Section I(a)(4) as follows:

*(4) The purchase, with plan assets, of an insurance or annuity contract from an insurance company and the resulting receipt of compensation by the insurance company in connection with the purchase.*

Strike Section I(b).

Revise Section VI(b) as follows:

*(b) The insurance agent or broker, pension consultant, insurance company or investment company Principal Underwriter that is a fiduciary acts in the “Best Interest” of the plan or IRA is when the fiduciary acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances and needs of the plan or IRA, without regard to by placing the interests of the Retirement Investor before the financial or other interests of the fiduciary, any affiliate or other party.*

Revise Section VI(f) as follows:

*(f) The term “Insurance Commission” means (1) a sales commission paid by the insurance company or an Affiliate to the insurance agent or broker or pension consultant for the service of effecting the purchase or sale of an insurance or annuity contract, including renewal fees, trailers, gross dealer concessions and overrides, and but not (2) revenue sharing payments, administrative fees, marketing payments, and other payments from parties other than the insurance company or its Affiliates.*

Revise Section VI(h) as follows:

*(h) A “Material Conflict of Interest” exists when a person has a material financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a plan or IRA.*

#### **IV. The Best Interest Contract Exemption (BICE) must be revised and re-proposed since, absent substantial changes, it has no utility for the insured retirement industry.**

In theory, the BICE would permit investment advice fiduciaries to receive otherwise prohibited compensation in connection with transactions involving IRA owners, plan participants and beneficiaries with direct investment authority, and plan sponsors of certain non-participant directed plans. These individuals are referred to collectively in the exemption as “Retirement Investors.” To receive the protection of the exemption, fiduciaries would need to:

- Act in the “Best Interest” of the Retirement Investor, and
- Receive no more than “reasonable compensation”, and
- Not make any misleading statements, and
- Admit fiduciary status under ERISA, and
- Prior to offering any recommendation, along with a “Financial Institution,” enter into a contract with the Retirement Investor that:



- Includes warranties that state that the fiduciary and “Financial Institution” –
  - Will comply with all applicable federal and state securities laws, and
  - Has written policies and procedures to mitigate conflicts of interest, and
  - Has identified any material conflicts and adopted measures to make sure that they do not violate the BICE “impartial conduct standards”, and
  - Does not use incentives, quotas or other personnel actions, bonuses, contests, special awards, differential compensation or other actions that would encourage an adviser to make recommendations that are not in the Best Interest of the investor, and
  - Does not contain any exculpatory provisions disclaiming or otherwise limiting the liability of the adviser or financial institution for a violation of the contract’s terms, or waives their right to bring a class action regarding the dispute.

In addition, the fiduciary must:

- Detail material conflicts of interest;
- Inform the Retirement Investor of his or her right to obtain information about fees;
- Disclose whether the fiduciary offers proprietary products or receives 3<sup>rd</sup> party payments with respect to the purchase, sale, or holding of any asset, and provides the website where that information can be located (the “initial disclosure”);
- Provide point of sale disclosures explaining the total projected cost of the assets available for investment (the “point of sale disclosure”);
- Provide an annual disclosure of each asset purchased and sold in the past year, and the compensation received by the adviser (the “annual disclosure”);
- Maintain a website that shows the cost and the direct and indirect compensation paid to the adviser, the financial institution, and each affiliate for each assets in the plan (the “website disclosure”);
- Make a range of investment options available that is broad enough to enable the adviser to make recommendations from all the asset classes “reasonably necessary to serve the investor’s Best Interest, or, if they do not offer such range, make a written finding that limits on the assets offered do not prevent the adviser from providing advice that is in the Best Interest of the Retirement Investor; and
- Provide, upon request, detailed and sensitive information related to the activity within a customer’s account, personal information related to advisers which the Department can post publicly and detailed information related to investments offered under the exemption.

The BICE does not meet the administrative exemption requirements under ERISA §408(a), and therefore should re-proposed after further consideration. We also ask that a final rule regarding the definition of fiduciary not be effective until a workable exemption is also made final and effective.

ERISA §408(a) grants the Department authority to grant administrative exemptions from the prohibited transaction provisions of ERISA and the Code for a class of transactions or for individual transactions. However, in order to grant an administrative exemption, the Department must make a determination that the exemption is (1) administratively feasible; (2) in the interest of the plan and its participants and beneficiaries; and (3) protective of the rights of plan participants and beneficiaries.

The BICE does not meet the requirements for an administrative exemption under §408(a). As detailed herein, the BICE is far from administratively feasible -- it requires entities that are not functional

ERISA fiduciaries to adopt fiduciary status; it is strikingly opaque regarding basic compliance concepts such as 'reasonable compensation'; it is incompatible with standard business practices in the financial services industry; it may inadvertently subject agents and brokers to the Investment Advisers Act of 1940; and its disclosure requirements potentially conflict with SEC and FINRA compliance rules. While a broad exemption is clearly necessary under the Proposal, BICE also does not serve the interests of plans, participants, and IRA owners, because it will eliminate financial professionals' ability to provide advice to certain small plans and participants eligible for a distribution. Finally, the BICE is not protective of the rights of plan participants and beneficiaries, because it will reduce access to the types of helpful investment education that participants in self-directed plans and IRAs have come to expect, and provides no substantive transition relief to allow retirement investors to maintain their existing arrangements under the current terms if they so choose.

Given that the Department has issued more than 120 separate requests for public comment and assistance with regard to the BICE alone, it stands to reason that the exemption deserves further agency attention consistent with the administrative exemption principles in ERISA §408(a). ACLI therefore urges the Department to withdraw the BICE, and to consider re-proposing the exemption following a more robust period of public comment in which all stakeholders have the opportunity to address the Department's questions and concerns.

In the preamble to the BICE, the Department inquired as to the distribution methods and channels applicable to annuity products that are not securities. As you consider the following comments, it is important to note that annuities are offered through a broad spectrum of distribution channels. These include agents (via insurance agencies or by insurer's own employees), affiliated or independent broker-dealers, wirehouses, financial planners, and financial institutions such as banks. Agents appointed by a company offering annuities may be "captive," offering only that company's proprietary products. Some annuity companies may allow their agents to offer other companies' products in limited circumstances, such as when the customer is looking for a type of annuity the carrier does not offer. Some insurers and external distribution partners such as banks, wirehouses, and independent broker-dealers offer products including annuity products in addition to an insurer's proprietary products. Some annuity carriers contract with independent "marketing organizations" that act as an intermediary between independent insurance agents and the annuity carrier. These marketing organizations may perform services such as agent recruiting, contracting, licensing, continuing education, and sales support.

Individuals that offer an insurer's fixed annuities and other non-security annuity contracts must be appropriately licensed and appointed by the company. For an annuity that is a security (i.e. a variable annuity), the individual also must have a security license and also be properly registered with FINRA and applicable state security departments. Annuities that are securities may be offered through affiliated or non-affiliated broker-dealers.

As for the types of annuities that are offered and to whom they are offered, this varies. Some insurance companies only utilize agents whereas others utilize the full spectrum of agent and third party distribution partners. Sales of proprietary products may be more concentrated within an insurer's career agent salesforce. Broker Dealers may sell annuity-based IRAs and nonqualified annuities to individuals, while annuity sales to qualified plans may be more concentrated in a smaller number of registered representatives. Bank channels may sell more fixed than variable annuity products while wirehouses tend to offer more variable products such as variable annuities with living benefits. However, there does not appear to be a consistent trend in the prevalence of the type of annuities that are offered through different distribution methods across insurers.

In our review of the BICE, by any measure, it is the most prescriptive exemption ever issued by the Department. We have a number of concerns regarding the BICE as proposed. Set forth below is an

explanation of these concerns, as well as recommendations for the Department's consideration as to how the BICE could be modified.

The BICE imposes fiduciary status on insurers even when the insurer is not a fiduciary under the proposed definition. The proposed definition requires that a person both (1) provide a recommendation regarding an investment or financial professional (or offer and appraisal), directly to a plan or IRA owner and (2) acknowledge fiduciary status or provide advice pursuant to an arrangement or understanding. Under the BICE, a "Financial Institution" is defined as an entity that retains an Adviser who is an independent contractor, agent or registered representative. Financial Institutions do not provide advice directly to plans or IRA owners; as such, they would not be fiduciaries under the proposed regulatory definition. However, although not fiduciaries, Financial Institutions must nevertheless agree to be fiduciaries in order for the Adviser to take advantage of the exemptive relief of the BICE. As the BICE requires a contract be signed before a recommendation could be made, Advisers who conduct business with a variety of Financial Institutions *and/or are retained by more than one Financial Institution* will need to have the investor sign agreements with each and every one before they enter into a discussion.

Generally, if a fiduciary does not comply with the every requirement of the BICE, the fiduciary risks engaging in a prohibited transaction. However, certain requirements of the exemption are so ambiguous that it would be difficult for any fiduciary to confirm that she is in compliance with BICE. The Impartial Conduct Standard requires that the adviser and financial institution agree contractually that they will not recommend an investment if the total amount of compensation anticipated to be received in connection with the recommended transaction exceeds reasonable compensation in relation to the total services provided. ACLI is concerned that the use and meaning of "reasonable compensation," which is not explained in the exemption, is intended to have some meaning other than as applied under the statutory exemption found at ERISA §408(b)(2) and the regulations promulgated thereunder. ACLI also questions the propriety of measuring the sum total of all compensation received in connection with the sale of a proprietary annuity product against the reasonable costs of services provided to the advice recipient. Insurance products include charges that are assessed not merely for the provision of services, but also for the provision of the guarantees and other financial benefits set forth in the insurance contract. Prohibited Transaction Exemption 84-24, which also contains a reasonable compensation condition, takes this incremental additional cost into account by including not just the costs of fees related to the provision of services but also the fees and other considerations received in connection with the purchase of the insurance or annuity contract for purposes of determining the reasonableness of total cost. ACLI urges the Department to extend this approach to the BICE.

The BICE requires advisers and financial services companies to represent that the investment will, in essence, meet the ERISA prudent man standard. As noted in an April 2005 article in the *Journal of Pension Benefits*, "The prudent man rule is only 42 words long, but it is the parent of scores of litigated cases and millions of words of analysis. Despite this volume of information the rule still creates confusion and discomfort. That is doubly true in the context of participant directed plans." The Second Circuit Court of Appeals called the ERISA prudence standard "one of the highest duties known in the law".<sup>18</sup> To add additional untested and undefined standards to the prudence obligation leaves the overall requirements for the BICE so uncertain as to expose fiduciaries seeking to utilize the exemption to potentially enormous financial risks, the scope of which cannot reliably be estimated in light of the legal uncertainties introduced by the Department's new language. These uncertainties are so great that many financial institutions may conclude that reliance on the BICE would itself be imprudent to the company's other constituencies, including its other policyholders, its employees and shareholders. ACLI requests that, at a minimum, the changes recommended here be adopted and that the Department consider providing a detailed definition of each standard.

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<sup>18</sup> See *Donovan v. Bierwirth*, 680 F.2<sup>nd</sup> 263, 272 n.8 (2<sup>nd</sup> Cir. 1982).

**A. The impartial conduct standards that form the foundation of the BICE are unacceptably ambiguous.**

**1. The BICE is not clear as to which forms of variable compensation are permissible.**

The BICE impartial conduct standards include two separate requirements that create unacceptable ambiguity as to whether the customary compensation practices would be permitted going forward. First, the BICE requires financial institutions to warrant that they do not pay their advisers differential compensation that would tend to incent the adviser to make recommendations that are not in the best interest in of Retirement Investors. Second, financial institutions are required to represent that the compensation received by the financial institution, the adviser, affiliates and related parties is reasonable for the services provided to the retirement investor. Furthermore, if the financial institution places limits on the investments it offers, then under Section IV of the exemption, the Department sets forth an even higher standard that requires the financial institution to justify each payment stream with separate and distinct services. These requirements are over and above the basic requirement that the adviser only make recommendations that are in the best interest of investors. These additional requirements under the BICE impartial conduct standards should be eliminated, sufficiently contextualized, or the extent of the obligations should be clearly defined. The Department states in the preamble to the exemption that the BICE is designed to allow continued receipt of commissions, yet the text of the rule does not create a clear, operational standard that accounts for the industry's diverse business models. BICE ambiguity as to permissible compensation structures results in the courts or the Department, rather than the Retirement Investor or the market, deciding the manner in which a retirement investor can pay for services. Allowing a court or a regulator to decide after the fact whether differential compensation in the form of commissions satisfies this standard is plainly unworkable.

**2. The prohibition on differential compensation should be eliminated.**

The Department describes the BICE exemption as a business model-neutral means by which a fiduciary may receive differential compensation without triggering a prohibited transaction. By the Department's determination, the BICE "accommodates a wide range of current business practices while minimizing the impact of Conflicts of Interest..."<sup>19</sup> However, in practice, the BICE is primarily suited for a business model that does not actually exist among insurance-based financial services institutions – one that does not pay advisers differential compensation for the sale of products. According to the BICE, "[n]either the Financial Institution nor (to the best of its knowledge) any Affiliate or Related Entity uses quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, **differential compensation** or other actions or incentives to the extent they would tend to encourage individual Advisers to make recommendations that are not in the Best Interest of the Retirement Investor. Notwithstanding the foregoing, the contractual warranty set forth in this Section II(d)(4) does not prevent the Financial Institution or its Affiliates and Related Entities from providing Advisers with differential compensation based on investments by Plans, participant or beneficiary accounts, or IRAs, to the extent such compensation would not encourage advice that runs counter to the Best Interest of the Retirement Investor (e.g., **differential compensation based on such neutral factors as the difference in time and analysis necessary to provide prudent advice with respect to different types of investments would be permissible**)." (emphasis added).<sup>20</sup> Given this highly subjective, ambiguous text, this condition creates considerable uncertainty as to how the Department would interpret—after the fact—whether Financial Institutions used differential compensation, or took other actions, that "tended" to encourage "individual Advisers" to make recommendations that are not in the Best Interest of the Retirement Investor. This can be interpreted to require that each firm prove that the differences in the compensation received by the adviser and firm (e.g., commission rates, loads, third party payments, breakpoints, payout grids, etc.) amongst and within different products (e.g., stocks, bonds, annuities, mutual funds, etc.) are justified based on neutral factors (and are therefore in the client's best interests) rather than set by the market.

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<sup>19</sup> 80 FR 21947

<sup>20</sup> 80 Fed. Reg. at 21984.

The Department states in the Preamble that the BICE is designed to allow continued receipt of commissions, yet the text of the rule does not create a clear, operational standard that accounts for the industry's broker-dealer models. In fact, the financial services industry is vast, the products are varied, and the distribution channels and compensation structures are far more complex than anticipated by the Department. This is evident, for example, in the "neutral" differential compensation models identified as permissible, such as models that compensate advisers based on "time and analysis" necessary to provide advice with respect to different types of investments, use a fee-offset model, or rely strictly on an "assets invested" calculation. These models are not currently employed by most insurers, and even if they were more clearly defined, could not be instituted without significant changes to the very core of their compensation models. The result is that middle class Americans could lose access to commission-based products, including annuities and mutual funds, the very products they should be invested in to fund their retirement. Currently, 98% of investor accounts with \$25,000 or less in their IRAs are in brokerage relationships.<sup>21</sup> This makes commission based accounts the most effective way for middle class investors to save for retirement and secure guaranteed lifetime income so that they do not outlive their retirement assets.

In the preamble to the proposed BICE, there are a number of examples of how a firm may mitigate conflicts. We ask that, when issuing a final BICE, the following example be included to illustrate how a firm may reasonably mitigate conflicts when customary compensation differs based on products and services. As proposed, the BICE would not provide this firm any certainty as to whether compensation paid is permitted or prohibited.

*Example: Balancing of asset-based and commission compensation. The Financial Institution permits the Adviser to receive either a commission or asset-based compensation, but not both, for any single affiliated or unaffiliated investment product, provided however that only a commission may be paid with respect to an investment product with no account value, such as an immediate annuity or a qualifying longevity annuity contract (QLAC), unless an actuarial present value will be provided periodically by the contract issuer. The Financial Institution does not offer any investment product or alternative that pays a commission which materially exceeds the average commission rates for similar products (as determined through periodic market surveys or analysis), or for which the aggregate of product fees and account advisory fees would exceed the cost to the client of a comparable commissioned product available to the Financial Institution and the Adviser. The Financial Institution also encourages, but does not require, the use of financial plans applying generally recognized principles of retirement income planning, to determine an appropriate allocation to annuity contract income guarantees.*

Under the Proposal, however, clients will likely be required to enter into a managed account (an account favored by the BICE) and such clients may find that managed accounts are the only accounts available in order to receive any guidance:

- Advisory-fee based accounts typically require minimum investment of amounts between \$50,000 to \$250,000 (depending upon the services and whether it is a retirement account). Thus, commission-based accounts are often the only way in which investors with less to invest can obtain any form of guidance.
- Managed programs, which charge ongoing fees based upon assets under management, can be more expensive and are generally not a good choice for buy and hold investors, such as those investors who seek lifetime income guarantees.

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<sup>21</sup> Oliver Wyman report: Assessment of the impact of the Department of Labor's proposed "fiduciary" definition rule on IRA consumers, April 12, 2011, available at <https://www.dol.gov/ebsa/pdf/WymanStudy041211.pdf>.



- Annuities are generally sold on a commission basis and not in a managed account, decreasing a retiree's opportunity for guaranteed retirement income.
- FINRA and the SEC do not consider managed accounts suitable for investors who do not trade very often. The SEC encourages such investors to maintain brokerage accounts rather than paying an ongoing fee in an advisory account.

The cost of losing access to retirement security products and services is not something American savers and retirees can afford. An Oliver Wyman study estimated that direct costs to savers who use brokers and are forced into managed accounts in order to continue to receive access to retirement products and services would increase from anywhere from 75 percent to 195 percent. In response to various stakeholders raising this concern, the Department has consistently assured Congress, consumers and financial professionals that their Proposal would not ban commission based products and services. The Department has essentially banned commission-based products and accounts by adding conditions that simply do not work for brokerage accounts and annuities.

The current language regarding compensation models that “tend to” encourage conflicts should be eliminated. The standard is far too broad. Rather than forming the basis of an objectively determinable standard, this particular language assures subjectivity and confusion among plaintiffs, defendants and the courts themselves. We would suggest that the warranty section related to policies and procedures should be eliminated entirely. Firms will have sufficient incentive to adopt policies and procedures given the impartial conduct standard requirements of the contract. Adding additional requirements that create confusion and ambiguity related to commission-based sales is not helpful or necessary. The Impartial Conduct Standards and the other affirmations made under the Section II(d) Warranties provide extensive and sufficient consumer protections. These warranties include the disclosure of Material Conflicts of Interest. Thus, Section II(d)(4) is not only redundant, but unnecessarily creates uncertainty as to the utility of the BICE. This further supports the need to re-propose the exemption in a workable form.

ACLI recommends Section II(d)(4) be eliminated.

### **3. The Proposal should utilize one definition of reasonable “and customary” compensation.**

The Department uses three different formulations of the concept of “reasonable compensation” within the BICE creating unnecessary and harmful confusion. With respect to the “reasonable compensation” requirement under the BICE’s impartial conduct standard as well as the supposedly heightened standard found in Section IV of the BICE, we are concerned that the wording used by the Department seems to require fiduciaries to justify each third-party payment they receive in relation to specific services provided to a particular IRA owner or 401(k) participant. Consistent with revenue sharing practices used for many years in the 401(k) industry, it is common for providers, like broker-dealers, who offer IRAs to use third-party payments like revenue sharing and sub-transfer-agent fees to help pay for the platform and keep down direct costs to the clients. Due to economies of scale, these negotiations with the product providers are done at a book of business level, rather than at an individual investor level, and are based on the relevant negotiating powers of the parties. Third-party payments, like revenue sharing, are not typically paid to advisers so generally do not create a conflict under the differential compensation warranty mentioned above. Furthermore, it would be untenable to match up any particular payment to any particular investor. In fact, some investors may pay slightly more due to the funds they select while others may pay slightly less even though the services are basically the same. Higher net-worth clients with larger account balances subsidize those with more modest lower account balances. This subsidization permits investors with smaller balances to save for retirement at lower costs and is inherent in many investment products in the market place, including mutual funds, which by their very nature and purpose mutualize the costs of investing. We would appreciate the Department clarifying that such variances are reasonable by deleting the “in relation to the total services they provide to the

Retirement Investor” language in Section II(c)(2) and by deleting the supposedly heightened “reasonable compensation” provision in Section IV (we explain why the entire Section IV is misguided and should be deleted in its entirety later in this letter).

Our members know of no repository, public or private, of information regarding market rates for various types of firms, advisers, investments, or services. Without a measurable standard, not only is the reasonable compensation standard meaningless, it is impossible to meet this standard with any degree of accuracy. Furthermore, the Department offers no proposed definition of reasonable compensation that would specifically offer us the opportunity to offer meaningful comment. Although the Department makes reference to reasonable compensation “under the circumstances” in the preamble, no such context is made part of the proposed exemption. Any such references presumably are to the standard generally applicable to fiduciaries when they are engaging a third party to provide a product or service to the plan. Such a fiduciary is generally expected to have a reasonable process for determining the reasonability of the compensation, whether based on multiple bids or otherwise. Under the Department’s Proposal, it is that same fiduciary – or plan participant or IRA owner – who will instead be challenging the reasonability of the compensation, and absent further clarification from the Department the fiduciary adviser will have no clear standard to assert in its defense, whatever the level of the compensation may be. The Department should confirm that a reasonable process for the investment advice fiduciary would be sufficient to establish that the fiduciary’s compensation is reasonable and customary.

The concept of reasonable compensation is already inherent in ERISA, and is therefore redundant as part of the exemption as to retirement plans. ERISA section 408(b)(2) provides an exception for “reasonable arrangements” for necessary services for which no more than “reasonable compensation” is paid. While this standard does not apply to IRA plans, the Department would eliminate significant administrative duplicity by simply requiring a warranty with regard to reasonable and customary compensation – and an identifiable standard therefore – as part of the BICE as it applies to IRAs.

With these points in mind, ACLI members recommend amending Section II(c)(2) as follows:

*“...., if the total amount of compensation anticipated to be received by the Adviser, and Financial Institution ~~and Affiliates and Related Entities~~ in connection with the purchase, sale or holding of the Asset by the Plan, participant or beneficiary account or IRA, will exceed that which is reasonable and customary for the products and services provided ~~reasonable compensation in relation to the total services they provide to the Retirement Investor; and~~ comply with the following:”*

#### **4. The Structure of the BICE Makes Compliance Uncertain and Therefore, Unworkable**

The principles-based nature of the BICE creates considerable exposure for advisers seeking the protection of the exemption, rendering it unusable from a compliance standpoint. In order to meet the requirements of the BICE and avoid a prohibited transaction, fiduciaries would not only be required to contractually obligate themselves to act in the client’s best interest but would also have to comply with the best interest standard to avoid a prohibited transaction. This formulation makes it impossible for financial institutions to have confidence that they have ever met the conditions of the BICE and is unnecessary to protect retirement investors. By requiring a contractual obligation, the Retirement Investor will have a legally enforceable cause of action against a financial institution for breach of contract if the client is harmed by recommendations that were not in his or her best interest. This legal cause of action is what the Department claimed was necessary to protect Retirement Investors. However, the Department also makes compliance with the best interest standard a condition of the exemption itself. Because such compliance is purely subjective, financial



institutions will never be certain whether the conditions have been met and that no excise taxes are owed. Furthermore, the penalty for breach of contract will be to compensate the Retirement Investor for any harm suffered. The penalty for a prohibited transaction is an excise tax that is due regardless of whether any harm occurred.

In addition, financial institutions are also required to warrant, or guarantee, certain conditions that are likely to be determined only in retrospect, such as:

- That they are in continuous compliance with all state and federal securities laws,
- That each “material” conflict has been identified and disclosed; and,
- That they have personnel policies appropriately align with the Best Interest standard.

If a court determines that a fiduciary breached any of these warranties, or even if a court determined that a fiduciary’s fees were “unreasonable”, the fiduciary could be subject to undeterminable monetary damages based on a new state-law contract right of action. Allowing courts to be determine ERISA fiduciary compliance in hindsight without any clear mitigation strategy is simply not an acceptable business model for any responsible ERISA fiduciary, and many advisers will strongly consider exiting the retirement market due to inability to properly assess the risks.

Even in the absence of litigation, it is not clear that an adviser would be able to determine whether an excise tax is due. A fiduciary that takes reasonable measures to maintain reasonable fees may find that as market conditions shift, those fees may be deemed ‘unreasonable’ under the very same standard. As the law develops in this area, a fiduciary may find that her firms’ compensation practices may be deemed to inappropriately promote propriety products over non-proprietary products. It is unclear, under the BICE, whether this knowledge alone triggers an excise tax under Code section 4975, and an attendant duty to self-report.

The language in the preamble to the BICE only adds to the ambiguity associated with compliance. The preamble states that the “effect of noncompliance with any condition [of the exemption] depends on whether the condition applies to a single transaction or multiple transactions. The compensation associated with the prohibited transaction, or segment of the prohibited transaction, would not receive the relief.”<sup>22</sup> This language is wholly unhelpful in assessing compliance risk associated with the BICE.

As currently constructed, no fiduciary could ever be certain that the BICE applied to its advice, exposing fiduciaries to a punitive excise tax scheme even for an inadvertent failure to comply. There would be no need for the Retirement Investor to demonstrate that harm has occurred, or even to demonstrate that he or she did not benefit from the recommendation.

The BICE exemption should be overhauled to include bright-line rules for compliance and safe harbors that would allow a fiduciary, at the first instance, and a court, at the second, to determine when compliance is compromised. The impartial conduct standards that are not objectively measurable, such as whether a fiduciary has acted in the Best Interest of a customer, whether his or her compensation is reasonable, and whether a potential conflict is ‘material’ enough to trigger a disclosure requirement, should be made contractual representations, rather than conditions of the exemption.

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<sup>22</sup> 80 FR 21976

At minimum, section II(c) of the BICE should be amended as follows:

*“Impartial Conduct Standards. The Adviser and the Financial Institution affirmatively agree to, ~~and comply with,~~ the following:”*

**5. The definition of Financial Institution and the imposition of fiduciary status through the BICE, not the definition of fiduciary, are unacceptable.**

Fiduciary status should be addressed by the definition promulgated under ERISA §3(21)(A)(ii) and not imposed as a condition of exemptive relief. Financial Institutions that do not provide advice directly to plans or IRA owners would not be fiduciaries under the proposed regulatory definition. Under the BICE definition, in addition to an employer of an Adviser, a Financial Institution is to include any entity that “otherwise retains such individual as an independent contractor, agent or registered representative...” Thus, firms that have granted the Adviser permission to sell products and who otherwise are not treated as fiduciaries under the ERISA or the proposed regulatory definition nevertheless must agree to fiduciary status under the BICE in order to sell products and allow the Adviser to obtain the relief provided by the exemption. This is the case despite the fact that they do not function as ERISA fiduciaries, do not directly control the actions of the Adviser, and have no ability to influence the Adviser’s recommendations. This is not acceptable.

Furthermore, the application of this particular provision of the BICE on Advisers that have numerous relationships with a number of entities including multiple insurance companies is not administratively feasible. An Adviser may serve as a licensed investment adviser for a registered investment advisory firm, a registered representative of a broker dealer, and a licensed insurance agent of an insurance agency. She may be an employee of one of these firms. She may have a variety of products to offer a customer from a multitude of product manufacturers. Under the BICE, the Adviser and every potential “Financial Institution” that may be a part of her discussion with the investor must enter into a contract with an investor prior to a recommendation and, as noted, the acknowledge status as a fiduciary.

ACLI recommends that the BICE definition of “Financial Institution” be limited to only those entities that are fiduciaries under the definition of fiduciary. Entities that, under the definition of a fiduciary, would not be treated as a fiduciary under the definition of fiduciary should be required to accept such status under the BICE.

Section VIII(e) of BICE should be revised to read as follows:

*“(e) “Financial Institution” means an entity that is an “affiliate” (as defined in ERISA §2510.3-21(f)(7)) of the Adviser who, together with the Adviser, functions as a fiduciary under ERISA §2510.3-21 for purposes of the covered transaction.”*

**B. Even if the compliance ambiguities were clarified, the technical requirements under the BICE render the exemption unworkable in the absence of significant changes.**

Even aside from the compliance risks associated with the BICE, our members believe that they would not be able to preserve their current business models and rely on the BICE for a number of very fundamental reasons. Each of these reasons is itemized and reviewed in detail below.

## 1. The Best Interest contract standard as drafted is unduly restrictive and impractical.

Section VIII(d) of the BICE states investment advice is in the “Best Interest” of the Retirement Investor when the Adviser and Financial Institution providing the advice act with the care, skill, prudence, and diligence under the circumstances then prevailing... *without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party.*<sup>23</sup>

This provision could easily be interpreted to imply that if an adviser has any financial interest in a retirement plan or IRA the transaction at all, he or she has violated the Best Interest standard. This includes having an interest in receiving any commission in any amount. This standard is more restrictive than even the standard for fiduciaries under ERISA, which the Department has recognized allows for certain incidental benefits due to the fiduciary’s relationship to the plan.<sup>24</sup> While it is unlikely that the Department expects that advisers as fiduciaries could interact with any customer entirely without regard to whether or not they will be compensated, the definition should be amended to make this fact clear.

The definition of Best Interest in Section VIII(d) should therefore be amended as follows:

*“...and needs of the Retirement Investor, ~~without regard to~~placing the interests of the Retirement Investor before the financial or other interest of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party);”<sup>25</sup>*

Corresponding revisions should be made to the following sections:

Section II(c)(1):

*“...and needs of the Retirement Investor, ~~without regard to~~placing the interests of the Retirement Investor before the financial interests of the Adviser, Financial Institution or any Affiliate;”*

Section IV(b)(4):

*“...and needs of the Retirement Investor, ~~without regard to~~placing the interests of the Retirement Investor before the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party) or otherwise adhering to the Impartial Conduct Standards;”*

## 2. The BICE pre-recommendation contract requirement is incompatible with customary business practices in the financial services industry, and is simply impracticable.

As written, the BICE requires that a customer execute a contract prior to any discussion occurring. This requirement is inconsistent with the manner in which advisers currently conduct business – imagine walking into a store and being asked to sign a contract before you can view any of the store’s merchandise -- and creates significant operational challenges for most financial professionals’ business models.

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<sup>23</sup> 80 FR 21987

<sup>24</sup> See ERISA Advisory Op. 2001-01A (January 18, 2001).

<sup>25</sup> We bring to the Department’s attention that the language of the preamble, which states that the Best Interest standard requires advisers to “put the interests of the Retirement Investor ahead of the financial interests of the Adviser”, which approaches the standard recommended by ACLI here.

It is impractical for an investor to execute a legally binding contract before she can determine whether to do business with a financial professional. It is also impractical under standard corporate governance to have every employee of the firm and its affiliates enter into legally binding contracts on behalf of the firm. It is common that only those individuals at a relatively high level within the firm may execute contracts on behalf of the firm. Furthermore, the BICE would require a contract between the investor and each employee at the firm who may be treated as a fiduciary under the broad terms of this Proposal. As a practical matter, we expect the public would not find this to be a positive customer service experience. We request that a contract issued by the fiduciary or the fiduciary's employer concurrent with a transaction executed through negative consent be sufficient.

Additionally, financial professionals generally begin their discussions with a new customer with a general consultation. This consultation may include a sales pitch in some form. It may also involve an offering of basic, high-level suggestions regarding investment strategies as a way to demonstrate their competency and communication style. The customer has an opportunity to ask questions about the adviser and to assess whether the services that the adviser offers meet his or her individual financial needs. The adviser may offer a pre-analysis with suggested approaches based on preliminary financial data from the potential customer. The adviser will also surmise whether the customer meets the adviser's customer criteria. Only after the parties agree that the relationship would be mutually beneficial would the adviser then take the first "live order" and enter into an engagement agreement.

Requiring advisers to enter into an agreement during the first meeting in which a potential "recommendation" is made is far too early in the relationship, and would require contracts to be executed prior to an adviser having a conversation about what products and services the adviser has to offer. ACLI members propose that the exemption require any contract to be executed within a "reasonable period of time" before or after the commencement of any trading or transaction activity. In order to protect prior recommendations, the contract could contain a provision that retroactively applies the Best Interest standard to any recommendations made prior to execution. The contract would provide that fiduciary status would affix concurrently with the receipt of compensation to the adviser.

In addition to creating operational difficulties for new customers, the need for a pre-recommendation contract will frustrate the use of the BICE by financial institutions that employ staff to engage with benefit eligible participants seeking lump sum distributions. These interventions result in assets remaining in plans or in the savings system via rollovers, and reduce retirement plan leakage. A retro-active contract executed once the transaction commences would therefore preserve plan assets as well.

### **3. BICE contracts should be subject to negative consent and should not require the Adviser to be a party.**

The exemption should allow for negative consent to the BICE contract as the Department requires the key terms of the contract to favor the investor. In addition, the requirement that the adviser also be a party to the contract is inconsistent with industry practice, is unnecessary and would create operational headaches that would not benefit anyone. As long as the financial institution is a party to the contract and takes responsibility for the actions of its advisers then there would be no additional protection provided to the retirement investor by having the adviser be a party to the contract. However, it would be extremely difficult to operationalize this requirement where a retirement investor works with multiple advisers. Take for example a financial institution that provides plan participants or IRA owners with recommendations through a call center. Would each phone representative have to be a party to each contract or would calls have to be directed to the adviser or advisers that were a party to the contract for that particular plan participant or IRA owner? Either way, if there is any level of turnover then the contract would need to be amended to add new advisers on a constant basis. Even with respect to advisers who work in a close one-on-one basis with retirement investors it has become more common for these advisers to work in a team

practice with advisers that specialize in different products and issues. Such a team practice environment acknowledges the difficulty in being an expert at everything and should be encouraged as it benefits retirement investors. However, it creates the same problem as the call center example above as turnover on teams is to be expected particularly as younger advisers decide to start up their own practices and are replaced with new advisers. For these reasons we respectfully request that the Department change the requirement to require that only the financial institution be a party to the contract.

**4. The narrow scope of the exemption will eliminate an adviser's ability to provide advice to certain small plans and plan participants eligible for a distribution.**

As it is currently written, the BICE is not available for fiduciaries that provide advice to small participant-directed plans. Clearly, the employers that offer these plans should have the same access to advice that is in their best interest as any other employer. There does not seem to be any policy reason to exclude these employers from receiving the guidance they currently enjoy and expect to continue to be available in the future. ACLI members request that these plans be included so as to not be inadvertently disadvantaged.

In addition, under the Proposal, recommendations to distribute benefits and/or rollover benefits are fiduciary recommendations regardless of whether the recommendation identifies specific investments to purchase or sell. In Section I of this letter, we recommend a change to the definition of fiduciary that treats a distribution recommendation as advice only when it is in conjunction with a recommendation regarding the disposal or exchange of an investment. Should the Department refrain from incorporating our suggested change, we ask that the BICE be extended to distribution and rollover recommendations.

**5. The BICE has implications under Investment Advisers Act for agents and brokers that enter BICE agreements acknowledging fiduciary status.**

Investment Advisers Act of 1940 (the "Advisers Act") establishes a clear line between selling agents who are primarily in the business of selling securities for a commission and investment advisers who offer advice regarding investments and receive a fee for their expertise in that regard. Under the Advisers Act, anyone who is in the business of providing investment advice for compensation must register as an investment adviser.<sup>26</sup> However, in order avoid an overly broad application of the law, the Advisers Act specifically excludes certain individuals, companies, and services from coverage and registration. These include lawyers, accountants, engineers, and teachers who provide investment advice that is solely incidental to the practice of their profession; publishers of a bona fide newspaper, magazine, or financial publications that may include investment advice; and any broker or dealer whose performance of advice services is solely incidental to the conduct of his business, and who receives no special compensation therefore.<sup>27</sup>

Insurance-based broker-dealers have carefully complied with this requirement, taking great pains to provide no more than incidental advice in order to avoid the need to submit to the SEC's regulatory scheme under the Advisers Act. The BICE will call these efforts into question, at best, and may involuntarily make broker-dealers subject to the Advisers Act, at worst. BICE will require broker-dealers to admit fiduciary status at the outset of any sales transaction, irrespective of whether any investment advice provided by the broker is incidental to the sale of a product. This admission of fiduciary status will likely cause the broker-dealer to fall outside of the current Advisers Act exception for non-fiduciary,

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<sup>26</sup> Section 202(a)(11), Investment Advisers Act.

<sup>27</sup> *Certain Broker-Dealers Deemed Not To Be Investment Advisers*, Investment Advisers Act Release No. 2376 (Apr. 12, 2005) ("Release 2376"), available at <http://www.sec.gov/rules/final/34-51523.pdf>.

“incidental” advice, and may obligate the broker monitor that advice on an ongoing basis. This will be the case despite the fact that most investors do not expect, or may not want to pay additional fees for such monitoring by a broker-dealer who is primarily a sales agent.

Ultimately, the true impact of the required fiduciary declaration under the BICE for Advisers Act purposes will rest with the SEC. Given this potential conflict between the BICE and the Advisers Act, ACLI encourages the Department to coordinate with the SEC as part of the BICE comment and review process in order to manage this conflict. If the fiduciary declaration requirement is made part of the final BICE, ACLI further requests that the Department work with the SEC to issue guidance contemporaneous with the final BICE that offers comfort that broker-dealers will not be subject to statutory investment adviser status by seeking the protection of the exemption.

#### **6. The exemption’s requirements for advisers that offer a limited range of investment options or proprietary products render it unfeasible.**

ACLI members recommend that the Department eliminate the requirements in Section IV, instead, require the fiduciary to disclose to the investor if the fiduciary offers only certain types of investments or proprietary products and whether the fiduciary is subject to any other limits on its advice recommendations.

The exemption currently requires a financial institution to offer a range of investment options that is broad enough to enable the adviser to make recommendations from all of the asset classes reasonably necessary to serve the investor’s Best Interest. This requirement is simply unfeasible in a number of respects. We have several concerns with this requirement.

First, this suggests that the BICE is not available to financial institutions that specialize in one type of product or investment. For instance, a broker who specializes in international bonds would apparently not be able to use the BICE even if they were willing to be held to a best interest standard when selling those bonds to an IRA or retirement plan. Second, the Department has not identified any objective standard for determining what this test would require. Our members feel strongly that they do offer a broad range of investment options such that advisers can make recommendations in the best interest of clients. However, subsection (b) provides additional rules where an investment provider has limited the Assets available for purchase, sale or holding based on whether the Assets are Proprietary Products, generate Third Party Payments, or for other reasons. It is not clear how subsections (a) and (b) are meant to work together. We would note as a threshold matter that we know of no Financial Institution that makes every Asset available for purchase. On the other hand, virtually every Financial Institution makes a range of investment options that is broad enough to permit advisers to make recommendations in the best interest of clients. Thus, it is entirely unclear whether anyone or everyone is required to meet the heightened requirements of subsection (b).

To the extent that subsection (b) is determined to apply, our members assert that it is inappropriate, at best, for the Department to require an investment provider to offer any specific product or range of products, or to require an adviser to disclose if he or she does not offer every product ever made available in the marketplace. Insurers, as product providers, and agents and brokers who sell these products should have the freedom to choose what products are offered without an undefined disclosure that the products offered are “limited,” especially if the product recommended meets customer needs. For broker dealers, the discrimination regarding products offered is the result of careful due diligence and vetting for FINRA Rule 2111 suitability standards, and is not a reflection of a lack of prudence in recommendation of securities. Even if an institution is a fiduciary, the decision by a financial institution to decide which products or investment funds to offer on its platform is a settlor function. Based on a firm’s individual business models, risk profiles, and particular customer-bases, each firm makes its own independent determination as to which products to offer.



Second, the impartial conduct standard of Section II already requires the adviser to make recommendations that are in the best interest of the client and the reasonable compensation provision requires that the total compensation paid by the retirement investor is reasonable in light of the services they have received. It is difficult to understand why the Department feels it necessary to layer on even more requirements unless it is to make absolutely sure no firm that sells proprietary products or receives third party payments can use the exemption. If that is the Department's intent, then the Department needs to do so in a transparent manner so that financial services firms can have a meaningful opportunity to comment. Furthermore, the reasonable compensation requirement at Section IV(b)(2) differs from all of the other instances in which reasonable compensation applies within the Proposal, the BICE and other prohibited transaction exemptions including ERISA §408(b)(2). This particular requirement is not business model neutral, but rather envisions the deconstruction of products and services into a la carte offerings. How one will determine the fair market value of a 1-800 call center, internet or mobile app account service? If such services are made available, but not used, have they been "specifically provided?"

#### **7. The required BICE disclosures should be harmonized with other disclosures.**

The Department should consider the effects of its proposed BICE disclosures on plan participants and IRA owners. The BICE disclosures are to be delivered in addition to all other applicable disclosures required by ERISA and other federal and state law. At the very least, the Department should seek to align the BICE requirements with ERISA's existing disclosure regime. ACLI members would propose substantial changes to the initial, annual, point-of-sale, and website disclosures required under the exemption. The insurance and financial services industries have consistently supported disclosure requirements to mitigate potential conflicts. We also believe that markets should hold firms accountable to ensure that fees are reasonable. However, firms do not currently have the capabilities necessary to comply with the disclosure rules. Much of the information requested by the Department does not exist in the format requested or must be obtained from third parties, such as fund manufacturers. For liability reasons, it would be inappropriate for advisers and firms to deliver third-party data on projected costs, for instance, without any way to verify that data. In addition, the disclosures may be cost-prohibitive for small firms to develop a disclosure system that would comply with the exemptions' requirements, limiting annuity sales opportunities for those institutions.

We are particularly concerned about the annual disclosure because it requires the disclosure of all compensation paid to the adviser and financial institution. The requirement is so broad that the Department has not been willing to state that it would not require the disclosure of spread revenue. Spread revenue is earned by financial institutions in a wide range of products including bank deposits, corporate bonds, and fixed accounts within both fixed and variable annuity products. No financial institution can determine the exact amount of spread revenue it has earned over any particular period not should it have to. The Department has consistently, and appropriately, considered spread revenue to be outside the term "compensation" because it is more accurately considered to be akin to investment earnings. The financial institution takes on risk and if it successfully manages that risk it earns spread revenue. However, in some cases the financial institution may experience risk losses and lose revenue. The Department should clarify in BICE that spread revenue is not compensation that the financial institution must disclose on an annual basis or on its website.

Second, it will be extremely difficult if not impossible for firms to identify the total indirect compensation paid by each retirement investor on its platform. In particular, it will be extremely expensive for financial institutions to track the movements of each retirement investor's account and then match up the retirement investor's holding each day with the internal expense ratio of each



investment. Such detailed disclosure is not required under the Department's 404(a)(5) disclosures presumably because it would be too costly yet the Department somehow thinks it would be feasible under the BICE.

Third, the website disclosure would require the development of a website that included specific information related to every investment available on the financial institution's platform. For many brokers, this would require disclosure at the CUSIP level of thousands and thousands of individual stocks, bonds, mutual funds, ETF's, variable annuities, etc. Even worse, because the website must include specific information related to how much an adviser is paid on each of these individual CUSIPs, a financial institution would likely have to create a separate website disclosure for each financial adviser! This could mean the creation of 10,000 websites for a financial institution who compensates advisers differently depending on a number of factors. This is not some hypothetical issue but rather the customary way that brokers pay their registered representatives today.

Fourth, the reporting obligations of Section IX are truly unprecedented. We particularly object to the concept of the Department gathering account level data related to our customers (including unique identifiers necessary for the Department to track each client's individual returns and tie those returns to their adviser) and then reserving the right to publish that data aggregated at an adviser level. The idea that the Department would identify individual advisers on its website along with the rate of return of the advisers' client is truly misguided. We note that the Department has not requested any specific information related to the adviser's clients that might be helpful in informing an opinion as to whether the adviser is doing a good job for each client. For instance, the Department is not looking for the age or risk tolerance of the adviser's clients, whether the adviser made any recommendations to the client and/or whether the client followed such recommendations, or whether other factors might have played a role in the returns such as an investment strategy that was otherwise sound but did not work well in a particular market environment. Instead, the Department appears satisfied to use such data to impugn the reputation of any adviser whose clients experience a lower return than the clients of other advisers even when that adviser provides services to more conservative investors. The Department should not take any step that may discourage advice that includes a recommendation to invest in a fund with low risk/return characteristics.

Even if the Department did not threaten to publish the data, the mere collecting of client data is very troubling. Given recent headlines related to data held by the federal government that was hacked by third parties, we suspect that many investors will be concerned that their data is being handed over to the federal government.

Information disclosures should be meaningful and actionable for retirement investors. The current disclosures under ERISA sections 408(b)(2) and 404(a)(5) should, in fact for point of sale purposes, suffice for many accounts. Those disclosures require detailed information regarding "reasonable compensation," much of which overlaps with the information requested under the BICE. Additionally, the annual disclosures required under Form 5500 Schedules A and C are not coordinated with the newly required annual disclosures in the BICE. Complying with the disclosure requirement by referencing existing ERISA disclosures will reduce the potential for investor information overload, and will make it more likely that investors will recognize the importance of the disclosure regime that the Department has worked very hard to develop for the retirement plan market.

To the extent that existing ERISA disclosures are not sufficient (for instance, in the IRA context), the Department should harmonize BICE disclosures with other disclosure regimes already existing in the securities industry. For instance, advisers should be permitted to disclose information requested by reference to documents such as the Form ADV disclosure, the prospectus, the NSCC database, some variation of the "compensation grid" used by used by a firm or adviser, the

SEC/FINRA “fund analyzer”, and certain private, independent 3<sup>rd</sup> party data sources on variable annuities.

Regarding IRAs, the Department should consider harmonizing the BICE point-of-sale disclosure requirements with current IRA disclosure requirements under Treasury Regulation. §1.408-6. We understand that the Department may be reluctant to harmonize BICE disclosures with the current compensation and fee disclosure requirements issued pursuant to ERISA section 408(b)(2), since these requirements apply only to plans, not IRAs. However, because IRAs are already subject to a separate, comprehensive cost and fee disclosure regime under Internal Revenue Service regulations, we encourage the Department to harmonize the BICE point-of-sale disclosures for IRAs with these existing rules.

Pursuant to Treasury Regulation §1.408-6, IRA providers must give IRA owners certain disclosures upon the establishment of an IRA and periodically thereafter. The regulations require providers to issue a disclosure statement and a copy of the governing instrument to the owner at establishment of the IRA, and to update these later with any amendments. The disclosure statement must set forth, in nontechnical language, concise explanations of the requirements of Code section 408, the income tax consequences of establishing the account and certain statements regarding the consequences of engaging in a prohibited transaction.

In addition, the disclosure statement must also contain a financial disclosure explaining the potential value of the account at various points in the future. The disclosure must comply with different rules depending on whether any assets are subject to guaranteed contracts. If no amount is guaranteed under the account and no projection can be made, the financial disclosure must assume level annual contributions of \$1,000 and must describe, in nontechnical language, (1) each type of charge (and amount) which may be made against a contribution, (2) the method for computing and allocating annual earnings, and (3) each other charge which can be applied to the account in determining the net amount of money available to the IRA owner.

These existing disclosure requirements for IRAs approximate, in streamlined form, the information required under proposed BICE point-of-sale disclosure requirements. Allowing this disclosure (or a substantially similar form of this disclosure) to stand as the point-of-sale disclosure for IRAs under the BICE achieves the Department's goals of making the total cost of the IRA “clear and salient” to the Retirement Investor, providing cost information that can be compared across different Assets, and informing the Retirement Investor of the impact of costs for the IRA over time. In addition, these disclosures would be combined with the disclosures required for the underlying investments, such as mutual funds, to provide even greater cost transparency for IRA owners.

ACLI members have been encouraged by recent statements from the Secretary suggesting that the Department will work to deliver finalized guidance that “accomplishes [the Proposal's] goals in the simplest, least burdensome way for all concerned”. We encourage the Department to take a small step forward in this vein by harmonizing the BICE point-of-sale disclosure requirements with the existing IRA disclosure requirements under Treasury Regulation §1.408-6.

#### **8. Forego a “low cost” prohibited transaction exemption.**

We agree with the Department's repeated caution to plan fiduciaries that fees are a consideration but certainly not the only consideration, and we believe that caution answers why a low cost prohibited transaction exemption would be inappropriate. The only rational response to such an exemption would be for a fiduciary to avoid offering certain services and products in order to achieve the fee level required for the fiduciary to rely on the low cost prohibited transaction exemption. Not only would that be a grave error on its own, it would substantially reduce the likelihood that critical retirement lifetime income guarantees would be available to individual plan

participants and IRA owners. Rather than push for a streamlined exemption for the types of investments the Department may favor at this time, we would urge the Department to resist the urge to pick winners and losers and rather let the market decide which products should be offered in the marketplace. We believe the Department should work to make the BICE a streamlined and workable exemption.

**9. The BICE language, at various points, should be amended to target actual, rather than perceived, conflicts.**

It is common for a plan sponsor to designate a menu of plan investments from which participants and beneficiaries may select. In so doing, a responsible plan fiduciary must determine whether the compensation to be received by the financial institution providing such investments receives reasonable compensation for its services. We suggest that when advice is provided to plan participants and beneficiaries regarding the plan's designated investments, there is no need for fiduciary advisers to second guess the plan's determination regarding the reasonableness of any compensation to be received.

We recommend Section II(c)(2) be revised as follows:

*"... regarding the Asset other than an Asset which is a designated investment alternative under the Plan, ...."*

State law bars insurers from making false statements. Clearly, statements on which an investor relies for her investment decision must not mislead. However, the phrase "relevant to a Retirement Investor" raises a subjective rather than objective analysis of whether or a particular statement is "misleading."

We recommend Section II(c)(3) be revised to provide greater certainty as to the exemption relief offered by the BICE:

*"(3) The Adviser's and Financial Institution's statements about the Asset, fees, Material Conflicts of Interest, and any other matters relevant to reasonably relied upon by a Retirement Investor's when making an investment decisions, will ~~are~~ not be misleading.*

**V. The proposed transition rule should be revised and expanded.**

We urge the Department to make application of a final regulation, including changes to prohibited transaction exemptions (particularly PTE 84-24) prospective only to apply to fiduciary advice with respect to retirement accounts opened or insurance contracts issued after the regulation's compliance date. Prospective application would allow for continued ongoing customer assistance for existing accounts. This is particularly important for commission-based annuity contracts, as retirement investors may have already paid for services. If the Proposal is applied retroactively, annuity owners would incur additional expense to transition to fee-based arrangements. For IRA owners with variable annuity contracts sold in reliance on PTE 84-24, the Proposal does not provide recourse for advisors and investors who have relied on this exemption in good faith. Without a reasonable grandfather provision, IRA owners may be compelled to surrender their annuity contracts to obtain advice.

While ACLI appreciates that the Department has included a form of transition relief in its BICE proposal, such relief is extremely narrow, and it is questionable whether it provides any meaningful relief beyond what would be provided by operation of law.

First, transition relief should be provided for excluded assets. Investments that do not meet the definition of “Assets” under the BICE may not be liquid and readily sold. As a result, financial institutions will have no way to dispose of these assets prior to the effective date of the new regulatory regime. Even when liquid, financial institutions generally do not have discretionary authority to sell out an investor’s account. The only way for an institution to “get rid” of these investments is to resign as the IRA custodian which may result in a taxable distribution and potentially a 10% early withdrawal penalty. It seems unlikely that this is the intent of the Proposal, yet there is no discussion of this issue in the preamble or regulatory impact analysis.

At a minimum, fiduciaries should be able to make sell and hold recommendations on any investments that the Department excludes from relief under the BICE, to the extent that the excluded assets were purchased before the regulation became effective. Furthermore, to the extent that the excluded asset includes rights that are appurtenant to the investment, fiduciaries should be able to provide recommendations related to the exercise of those rights as long as the fiduciary does not earn additional compensation related to such recommendations.

Second, relief is needed for existing customers who reject the Best Interest Contract. When a new contract requirement is imposed, it is inevitable that there will be some percentage of customers that will not sign or agree to the new contract. Even if the Department permits negative consent as we have requested, there may be agreements in place that do not permit amendments via negative consent. Transition relief is necessary to permit the financial institution to amend existing contracts or bring an orderly close to these accounts.

Third, if transition relief is not expanded, investors will be unable to obtain any information about existing products from service providers unwilling or unable to service in an ERISA fiduciary capacity.

#### **VI. Eight month delayed applicability date is unreasonable.**

Assuming the substantial modifications necessary to make the exemption workable raised here, compliance with the Proposal will be a major undertaking for financial institutions and advisers. The Proposal will not be administrable within the proposed applicability date of 8 months from the publication of a final exemption. ACLI recommends the Department provide at least three (3) years for the public to digest the final rule and the final exemptions, including the final amended PTE 84-24 (*the Department plans to provide at least 140 days for a review of the Proposal*), plan and implement changes to comply with the rule including the development and implementation of proper disclosures, the training of advisers to ensure compliance with each of the conditions, a review of all marketing materials, and the building appropriate supervisory procedures. Of note, the Department provided two years from the publication of interim final regulations under ERISA Section 408(b)(2) and the effective date of final regulations.

#### **VII. The cost-benefit analysis in the Proposal is deficient.**

Congress, courts, and the executive branch of government have issued unequivocal guidance mandating thorough, objective cost-benefit analysis in rulemaking. Collectively, these standards ensure that federal agencies “strike the right balance,” and develop “more affordable, less intrusive rules to achieve the same ends—giving careful consideration to benefits and costs.”<sup>28</sup> Notwithstanding its extensive “regulatory impact analysis,” the Department of Labor failed these standards by overstating benefits, understating costs, and disregarding harm to small retirement plans. Our suggested revisions

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<sup>28</sup> Op-Ed, President Barak Obama, *Toward a 21<sup>st</sup> Century Regulatory System*, Wall Street Journal (Jan. 18, 2011). The President’s Op-Ed coincided with his issuance of Executive Order 13,563, which set strict standards for cost-benefit analysis in federal agency rulemaking.

to the rule rectify these shortcomings, and more accurately balance benefits against costs. The cost-benefit standards and deficiencies are explained below.

### A. Executive, statutory and judicial precedent.

Executive branch mandates for cost-benefit analysis began in 1981 with Executive Order 12,291 that created a new procedure for the Office of Management and Budget (OMB) to review proposed agency regulations, and ensured the president would have greater control over agencies and improve the quality and consistency of agency rulemaking. Cost-benefit analysis formed the core of the review process. The order unambiguously stated that “regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society.”<sup>29</sup> Regulatory agencies, therefore, must balance the benefits of proposed rules against their costs.

In 1993 Executive Order 12,866 superseded the 1981 order, but retained cost-benefit analysis as a fundamental requirement in rulemaking. Executive Order 12,866 instructs that “in deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.”<sup>30</sup> In a manner parallel to the 1981 order, Executive Order 12,866 advises that agencies must perform their analysis and choose the regulatory approach that maximizes net benefits.<sup>31</sup>

President Obama reaffirmed the importance of cost-benefit analysis in 2011 through Executive Order 13,563, and reinforced the core principles in Executive Order 12,866 by emphasizing that “each agency must . . . propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs.”<sup>32</sup> Importantly, five administrations between 1981 to present have consistently made cost-benefit analysis a threshold for federal agency rulemaking.

The OMB provided federal agencies with extensive guidance to perform cost-benefit analysis in its Circular A-4.21 C<sup>33</sup>, which identifies three fundamental elements to federal agency rulemaking: (i) a statement of the need for the proposed regulation; (ii) discussion of alternative regulatory approaches; and, (iii) an analysis of both qualitative and quantitative costs and benefits of the proposed action and the leading alternatives. The analysis should attempt to express both benefits and costs in a common measure—monetary units—to facilitate the assessment. When benefits or costs cannot be quantified in monetary terms or in some other quantitative measure, the agency should describe them qualitatively.<sup>34</sup>

The Administrative Procedure Act (APA) provides comprehensive standards governing federal agency rulemaking, and includes guideposts for judicial review of agency rulemaking under an arbitrary and capricious threshold. The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. §§601-612) requires federal agencies to assess the impact of their forthcoming regulations on “small entities,” which the RFA

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<sup>29</sup> 46 Fed. Reg. 13193, 13193 (Feb. 17, 1981).

<sup>30</sup> Exec. Order No. 12,866, 3 C.F.R. 638 (1993).

<sup>31</sup> The 1981 and the 1993 executive orders emphasize different approaches to the same cost –benefit end. The 1981 order required that the benefits “outweigh” the costs, while the 1993 order required only that the benefits “justify” the costs. See generally Peter M. Shane, *Political Accountability in a System of Checks and Balances: The Case of Presidential Review of Rulemaking*, 48 ARK. L. REV. 161, 176-78 (1994) (comparison of 1981 and 1993 executive orders with additional detail and observing that the 1993 “order focuses on a similar mandate, but describes it with greater nuance”).

<sup>32</sup> Exec. Order 13,563, § 1(b), 76 Fed. Reg. 3821 (Jan. 18, 2011). The order further notes that “each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” Additional analysis of this order can be found in Helen G. Boutrous, *Regulatory Review in the Obama Administration: Cost-Benefit Analysis for Everyone*, 62 ADMIN. L. REV. 243, 260 (2010).

<sup>33</sup> Office of Mgmt. & Budget, Circular No. A-4, Regulatory Analysis (Sept. 17, 2003), last available at <http://www.whitehouse.gov/OMB/circulars/a004/a-4.pdf>. OMB invited full public comment on his 48-page circular in draft form, which contains detailed instructions about conducting cost-benefit analysis, and provides a standard template for running the analysis.

<sup>34</sup> To ensure that agencies properly perform cost-benefit analysis and select the most cost-effective regulatory options, OMB and the White House Office of Information and Regulatory Affairs (OIRA) review agency cost-benefit analysis before proposed regulations become effective.



defines as including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. Under the RFA, cabinet agencies must prepare a “regulatory flexibility analysis” when final rules are issued. The RFA requires the analysis to describe, among other things, (1) reasons why the regulatory action is being considered; (2) small entities to which the proposed rule will apply and, where feasible, an estimate of their number; (3) projected compliance burdens of the proposed rule; and (4) any significant alternatives to the rule that would accomplish the statutory objectives while minimizing the impact on small entities.

In three significant cases involving SEC rulemaking beginning in 2005, the Court of Appeals for the District of Columbia Circuit overturned major rules due to the SEC’s failure to conduct adequate cost-benefit analysis which the court viewed as arbitrary and capricious actions contrary to the mandates of the APA.<sup>35</sup> The holdings depart from the court’s traditionally more deferential approach to review of agency rulemaking in other administrative law contexts and provide a template for measuring appropriate cost-benefit analysis in federal agency rulemaking. These three rulings are significant because they were rendered by the federal court that typically reviews agency actions and, thus, serves as a touchstone for appropriate federal rulemaking in general. Additionally, the rulings provide an avoidable roadmap to litigation for insufficient cost-benefit analysis in rulemaking. On June 29, 2015, the U.S. Supreme Court underscored the primacy of a carefully balanced and quantified cost-benefit analysis in federal agency rulemaking.<sup>36</sup> In sum, therefore, the guidance established by statutes, executive Orders, and seminal recent court cases strongly warrant a more carefully balanced and detailed cost-benefit analysis before the Proposal moves forward.<sup>37</sup>

## **B. Measuring the regulatory impact analysis against executive, statutory and judicial precedent.**

The Proposal was accompanied by a 243 page “regulatory impact analysis” and seven supporting documents.<sup>38</sup> While significant in length, this cost-benefit analysis is fundamentally flawed in several significant respects, particularly as it pertains to variable annuities.

The Department justifies its Proposal with the claim that there is a “*substantial* failure in the market for retirement advice”.<sup>39</sup> The Department’s analysis fails to prove this assertion and contains at least three significant flaws which undermine its proposed solution. Specifically, the regulatory impact analysis: (1) calculates the cost of conflicted advice and the benefits of the proposed rule through selective and imbalanced use of academic studies of mutual funds that are misinterpreted and misapplied to the entire market for retirement advice; (2) overlooks the negative impact of the proposed

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<sup>35</sup> See *Chamber of Commerce v. SEC*, 412 F.3d 133 (D.C. Cir. 2005), *Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010), and *Bus. Roundtable & U.S. Chamber of Commerce v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011). In the Business Roundtable and US Chamber of Commerce case, the D.C. Circuit overturned proxy access Rule 14a-11 adopted by the SEC in August 2010. The court determined that the SEC’s failure to “apprise itself—and hence the public and the Congress—of the economic consequences of a proposed regulation” made promulgation of the rule arbitrary and capricious and not in accordance with law. The American Equity case involved the SEC’s adoption of Rule 151A under the Securities Act of 1933 which provided guidance as to whether fixed index annuities were entitled to rely on the exclusion provided under Section 3(a)(8) of that act. The court indicated that the SEC did not disclose a reasoned basis for its conclusion that Rule 151A would increase competition and the SEC did not make any finding as to existing level of competition in the marketplace under state insurance law regimes or the efficiency of existing state insurance law regimes. The Court remanded Rule 151A back to the SEC for “reconsideration,” solely because it found that the SEC had not given proper consideration to the rule’s effect on “efficiency, competition, and capital formation” in the annuity industry.

<sup>36</sup> *Michigan v. EPA*, No. 14-46 (June 29, 2015) [http://www.supremecourt.gov/opinions/14pdf/13-1314\\_3ea4.pdf](http://www.supremecourt.gov/opinions/14pdf/13-1314_3ea4.pdf). In this case, the Court sent a rule under the Clean Air Act back to the EPA to objectively quantify and balance the benefits and costs under the rule before it could become operative.

<sup>37</sup> See generally Peter M. Shane, *Political Accountability in a System of Checks and Balances: The Case of Presidential Review of Rulemaking*, 48 ARK. L. REV. 161, 176-78 (1994).

<sup>38</sup> Department of Labor documents pertaining to the proposed rule can be found here: <http://www.dol.gov/ebsa/regs/conflictsofinterest.html>.

<sup>39</sup> U.S. Department of Labor, “Fiduciary Investment Advice: Regulatory Impact Analysis”, April 14, 2015, p. 7.



rule on lower-wealth investors, the likelihood that the supply of financial advice will decline and price of advice increase, and the increased costs inflicted on employer plan participants; and, (3) bases estimates of direct costs of the Proposal on inadequate and incomplete data and insufficient consideration of the time required to implement changes necessary to comply with the Proposal.

Additionally, though the proposed rule and cost-benefit analysis mention annuities a total of 172 times and acknowledge that “31 percent of IRAs include investments in annuities” (p. 54) and that “insurance companies [will] be significantly affected by the proposal” (p. 56), the cost-benefit analysis makes no attempt to examine the impact of the proposed rule on insurers, the annuity market, or on the availability of lifetime income, nor does it attempt to assess the value of variable annuities or their role in retirement security.

### **1. The statement of potential benefits is flawed.**

The Department justifies the need for the proposed rule based on a selective review of six refereed studies and three working papers (see pp. 95-96 of the CBA for the complete list of studies),<sup>40</sup> Though the primary justification of the proposed rule is the elimination of conflicts of interest, the Department admits that “[n]one of these papers attempts to detect some major possible sources of underperformance of IRA assets attributable to conflicts of interest” (p. 97). The studies do, however, focus on either the returns of load vs. no-load mutual funds or the returns of broker-sold vs. direct-sold mutual funds. Most of these studies found that during the period under consideration broker-sold front-load mutual funds (which comprise only about 13 percent of the IRA market) may not have performed as well as other funds and that direct-sold mutual funds may have performed better than broker-sold mutual funds. None provide support for the assertion that fiduciary-advised accounts perform better than other types of accounts. The Department relies on these very narrowly focused studies as proof of market failure and does not utilize other bodies of work which would be useful for their analysis, such as the literature on the benefits of using a financial adviser.<sup>41</sup>

Based on the cited studies, and on the assumption that IRA holders who purchase broker-sold front-load mutual funds received conflicted investment advice which resulted in lower returns,, the Department determined that investors holding such funds can expect their investments to underperform by an average of 100 basis points annually. Using this figure and implicitly assuming that this level of underperformance will continue and that investors will not adjust their portfolios, the Department concludes that “underperformance associated with conflicts of interest -- associated with the mutual fund segment alone -- *could cost investors more than \$210 billion over the next 10 years and nearly \$500 over the next 20 years (p. 13).*”<sup>42</sup> The Department contends that if the Proposal is adopted and conflicted advice eliminated, costs would be lowered, and IRA investors would benefit by “*approximately \$40 billion over 10 years and almost \$90 billion over 20 years (p. 101).*”

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<sup>40</sup> A comprehensive review of the studies referred to in the DOL's CBA can be found in: Berkowitz, Jeremy; Comolli, Renzo; Conroy, Patrick, “Review of the White House Report Titled ‘The Effects of Conflicted Investment Advice on Retirement Savings’”, NERA Economic Consulting, March 15, 2015.

<sup>41</sup> Montmarquette, Claude; Viennot-Briot, Nathalie, “The Value of Financial Advice”, *Annals of Economics and Finance*, vol 16., no. 1, pp 69-94, 2015. This study finds that over the course of several years, investors who use advisers obtained greater returns than those who don't. For an explanation of the role and value of life insurance agents in assuring retirement security, see: Rosh, Robert M., “Death of a Salesman: The Rise and Unfortunate Potential Demise of the Full-Time Life Insurance Salesman”, *St. John's Law Review*, vol. 88, Winter 2014, No. 4, pp. 985-1021.

<sup>42</sup> Throughout their analysis the Department provides a very wide range of cost estimates associated with conflicted advice and with the benefits of the proposed rule. On the lower end, the Department estimates that the “expected gain would total between \$20 billion and \$22 billion over 10 years (p. 108)”. On the higher end, the Department estimates that “under current rules, advisor conflicts could cost IRA investors as much as \$410 billion over 10 years, and \$1 trillion over 20 years (p. 8)”, and that “underperformance associated with conflicts of interest ... could cost IRA investors \$210 to \$430 billion over the next 10 years and approximately \$500 billion to \$1 trillion over the next 20 years (p. 211)”. In a related analysis, the Council of Economic Advisors estimates that conflicted advice costs investors \$17 billion annually.

There are, however, at least three major weaknesses in relying on these studies and estimating the benefit of the proposed rule based on their results. First, all of the studies use data from the 1990s and early to mid 2000s. This is highly problematic because competition has significantly increased in recent years, driving down fees. In effect, the market has changed such that any analysis based on old data is *in no way applicable in the current market* and should not be used to formulate or substantiate regulations. For example, contrary to the findings of the cited studies, by some estimates, front-load fund shares sold between 2007 and 2013 outperformed Morningstar average returns for all funds with similar objectives by 27 basis points per year.<sup>43</sup>

Secondly, none of the cited studies examine a *representative* sample of *investor portfolios* through time, but rather the performance of one type of mutual fund at one point in time. The relative performance of only one type of fund in a given year offers a very limited view of the world. By relying solely on the cited studies to formulate the cost estimates of conflicted advice and benefit estimates of the proposed rule, the Department implicitly assumes that all investors, whether using a broker or not, are “buy and hold” investors. This is not a realistic assumption. In a competitive market, if returns are low investors will eventually shift their assets to more appropriate funds. Ideally, the performance of representative samples of entire portfolios which would include various types of funds and annuities, through time, should be considered. Such an approach would more properly control for critical additional factors, including demographics, wealth, investor sophistication, and different levels of risk tolerance, generating a more accurate analysis of the market. Although the working paper by Chalmers and Reuter cited in the Department analysis consider portfolio-level data, their sample is not representative of the US population -- and their data is unacceptably stale.<sup>44</sup> Chalmers and Reuter examine defined contribution plan accounts of faculty and administrators employed by the Oregon University System from 1996 to 2007. This is hardly representative of the general U.S. population today.

Finally, though results may be fairly consistent with regard to front-load mutual funds sold through broker-dealers in the 1990s and part of the 2000s, the results concerning other types of investments, such as revenue-sharing mutual funds, are much less conclusive. In fact, Christoffersen, Evans, and Musto (2013), a study the Department analysis relies upon most heavily and which appears to underpin all of the Department’s benefit estimates, do not contain strong evidence of a negative relationship between broker-sold revenue-sharing mutual funds and performance, suggesting that the Department may have selectively used more favorable results to estimate the benefit of the proposed rule. For these reasons, the cited studies should not be used to justify the need for, or determine the potential benefits of, the proposed rule and should not be relied on to formulate well-intentioned rules which can, in fact, have a detrimental impact on plan participants, particularly retirees and pre-retirees, as well as the financial services industry overall.

## **2. The Proposal inflicts an “advice gap” on individuals who can no longer obtain financial advice.**

In the Proposal, the Department acknowledges that a comprehensive analysis of the proposed rule “*would consider pure social welfare costs – that is, reductions in economic efficiency – which are not the same as simple compliance costs (p. 99)*”. Although the Department analysis evaluates indirect effects and social welfare implications, including the impact on supply and demand for advisory services, it does so inadequately and unrealistically.

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<sup>43</sup> Statement of Brian Reid, Chief Economist, Investment Company Institute, Hearing on “Restricting Access to Financial Advice: Evaluating the Costs and Consequences for Working Families and Retirees”; Subcommittee on Health, Employment, Labor, and Pensions’ Committee on Education and the workforce; United States House of Representatives, June 17, 2015.

<sup>44</sup> Chalmers, John; Reuter, Jonathan, “What is the Impact of Financial Advisors on Retirement Portfolio choices and Outcomes?”, *working paper*, May 6, 2014.

The Department cost-benefit analysis asserts that:

“Advisers can provide the same quality of advice while receiving non-conflict-based payments as they can when receiving a payment of equal amount based in conflict. The cost of advice depends primarily on the resources necessary to provide it ... rather than the form of the adviser’s compensation. Thus, an adviser receiving payment through non-conflicted structures should be able to provide advice at the same cost as an adviser receiving conflicted payments, as long as the inputs in time and infrastructure are equal (p. 217)”.

It is unclear why the Department assumes that inputs in time and infrastructure would be equal or that the market for financial advice would not change. The price of financial advice is determined by supply and demand. The time, resources and financial burdens of complying with the proposed rule will be greater than under current regulations. This, along with the increased risk of litigation, will induce some advisers to leave the business, lowering supply and increasing the price of advice. This will be particularly true of life insurance agents, a very large percentage of whom are nearing retirement age. Because consumers will face a higher price, many will be priced out of the market and may face the prospect of retirement planning without a financial professional. The advisers who remain in business are more likely to focus on wealthier customers. An increase in the cost of advice and fewer financial professionals will most impact small account IRA rollovers, the segment of the market the Department is most concerned with. In fact, most IRA rollovers are for small amounts. In 2013, 61.4% of IRA rollovers were for amounts less than \$50,000 and 75.1% were under \$100,000.<sup>45</sup> Almost half (47.8%) were for amounts less than \$25,000.

Though the cost-benefit analysis claims the opposite, there is compelling evidence that following the introduction of the Retail Distribution Review (RDR) in the U.K., which the Department extols in support of the Proposal, a significant percentage of small investors were priced out of the market and are now considered ‘stranded customers’. Due to the parallels between the Proposal and the RDR, the same regrettable consequences may also occur in the US due to the Proposal if adopted.

In June 2006 the United Kingdom’s financial regulator, the Financial Services Authority (FSA), created its Retail Distribution Review (RDR) program with the intention of enhancing consumer confidence in the retail investment market and eliminating ‘conflict risk’. In June 2007, the principal discussion paper on RDR was published, and on December 31, 2012, the RDR was implemented. The RDR has three general components: (1) a clear division between independent and restricted advice; (2) a ban on commissions; and, (3) greater minimum qualifications for investment advisers and a requirement that knowledge be maintained. Critics were concerned that the RDR would inherently change the incentives faced by investment advisers resulting in fewer advisers and a shift in focus toward high net worth investors, resulting in an ‘advice gap’ and a large number of ‘stranded customers’. Their assessment was correct.

Though the RDR was implemented at year-end 2012, the UK’s financial services industry was adjusting to the coming changes in the years leading up to implementation. The number of investment advisers was steadily declining pre-RDR. According to the Association of Professional Financial Advisers (APFA), in 2010 there were 43,937 investment advisers in the U.K. and by 2013 there were 31,132, almost a 30% decline. This decline can be primarily attributed to the new qualification standards and the ban on commissions, and to many older advisers choosing to retire earlier than they had planned rather than navigate the new system.

There is also evidence that there is indeed a growing ‘advice gap’. According to data collected by the APFA, in the years leading up to the implementation of RDR, about two-thirds of financial product sales took place with the help of an adviser. By 2012/2013 (the latest data available) this had declined

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<sup>45</sup> Copeland, Craig, Individual Retirement Account Balances, Contributions, and Rollovers, 2013: With Longitudinal Results 2010-2013: The EBRI IRA Database, Employee Benefit Research Institute, no. 414, May 2015.

to half and has likely declined since. This is further supported by the results of an annual survey conducted by Mintel, a well-respected marketing research firm. Mintel has administered an annual survey of retail financial advice for U.K. investors since 2009. Their data shows that the number of investors who received financial advice in the wake of the RDR regulation has declined dramatically (see table below). In fact, about half as many investors get advice from the largest advice channel in the U.K. than before the regulations took effect, and the second largest channel has been on a downward trend since the RDR was implemented on December 31, 2012.

**Financial Advice Usage in the U.K.\***

Year	Bank or Building Society Staff/Adviser	Independent Financial Adviser or Planner	Total
2009	32.0%	22.0%	54.0%
2010	28.0%	24.0%	52.0%
2011	29.0%	14.0%	43.0%
2012	31.0%	12.2%	43.2%
2013	24.5%	17.3%	41.8%
2014	20.3%	14.7%	35.0%
2015	16.0%	12.2%	28.2%

\*Source: Mintel. Survey response to “which of the following, if any, have you used for financial advice in the last 3 years?”.

A recent City University of London study noted that “the unintended consequences of the RDR initiative, accompanied by rapid change in technology and social media, is likely to further extend the ‘advice gap’, leaving aside those who have too few assets to merit attention from professional advisers, though they may well be in need of financial advice. This is an undesirable outcome (see Clare, Andrew; Thomas, Stephen; Walgama, Omali; Makris, Christina, “The Impact of the RDR on the UK’s Market for Financial Advice: Challenge and Opportunity”, *Cass Consulting, Cass Business School, City University of London*, June 2013).

An August 28, 2014 story by Morningstar UK reported that “eleven million investors consider financial advice too expensive and have fallen through the ‘advice gap’ following industry regulation”, and that “some investors prefer not to have an upfront cost for financial advice – as this prices them out of the advice market. Investors with a portfolio of £10,000 for example would understandably be unwilling to hand over a tenth of their assets for an initial consultation cost – whereas the old advice model which took out of the profits along the way would be easier to swallow”.

Even regulators have admitted that there is a growing advice gap. According to a September 10, 2013 Financial Times report, “FCA chief executive Martin Wheatley has admitted ‘concern’ over the post-RDR advice gap”. According to Wheatley “it is a concern that people with portfolios below £50,000 to £100,000 are not getting the same service they were getting...most advisers have worked out you can’t provide a fully advised service without five or six hours work and that costs money. Therefore we are seeing less of that model but we are seeing more web-based, entrepreneurial models delivering advice in a different form.” In fact, automated ‘web-based’ advice is being aggressively pushed by the UK regulator, though it is likely not a good substitute for face-to-face advice or for “five or six hours of work” by an investment professional.

Though seemingly upbeat in its assessment, in a recent post-RDR review, the UK's Financial Conduct Authority concluded that "by revealing the true cost of advice, the RDR has led some consumers to consider the extent to which the advice they receive represents value for money, and in some cases conclude it does not" (see: Financial Conduct Authority, "Post-Implementation Review of the Retail Distribution Review – Phase 1", December 2014). A related analysis by the firm Europe Economics finds that "...advice can be seen as a credence good, with its fundamental quality difficult for the consumer to assess *ex ante* – or even *ex post*. This means that there is a scope for advisers to compete on measures which consumers believe are good proxies for quality, but which may not in fact be reliable indications of underlying quality", and that "[f]irms are increasingly segmenting their consumers and considering the service they provide to different groups of consumers, with some focusing on services to those with higher levels of investible assets" (see: Europe Economics, "Retail Distribution Review: Post Implementation Review", December 16, 2014).

Several years ago the European Union Directorate General on Internal Markets and Services considered a ban on commissions in the insurance market. The EU asked the consulting firm PWC Luxembourg to conduct a study, part of which considered the impact of different solutions to conflicts of interest and remuneration.<sup>46</sup> The study concluded that a ban on commissions could have a negative impact on consumers and would create an information gap. Due in part to that experience, a European standard setting group has declined to uniformly impose a ban on commissioned sales, and chose instead to leave the commission issue to each state.

The Department acknowledges that comment letters on its 2010 proposal made a case that the initiative would result in diminished access to investment advice, particularly for low-balance savers, but appears unconcerned with this possibility, suggesting that 'robo-advisers' will fill any gaps that result from the proposed regulation.<sup>47</sup> However, robo-advisers are a new and untested method of providing financial advice and are not necessarily more cost-effective than in-person advice.<sup>48</sup> At year-end 2014 robo-advisers managed only \$19 billion in assets, compared to \$24.7 trillion in total U.S. retirement assets, about 0.077% of the market or 77 cents out of every \$1,000.<sup>49</sup>

There are no rigorous, refereed studies examining whether a robo-adviser is a good substitute for a human being. Numerous scholarly studies have shown, however, that there are clear positive effects from dealing with a human adviser, such as: encouragement to save more, less speculative trading, a more diversified portfolio, and greater discipline when faced with a volatile market. In fact, during financial downturns and market volatility, investors turn to human advisers for reassurance and are typically dissuaded from emotional investing. Because it is so recent, robo-advising has only been in existence during a bull market. It is unclear how this system would fare in a downturn. Depending on how many people utilize such a resource, there could be systemic implications which would be particularly devastating to retirees and pre-retirees, as well as the economy as a whole.

As noted above, the proposed rule will significantly increase the costs and risks associated with selling and marketing to small employers (99 employees or less). Life insurers provide products and services to 31.8 million employer plan participants, about 35% of the entire market. About 60% of plan participants who work for a small employer (7.1 million employees) rely on life insurers for products and services.<sup>50</sup> Virtually all small plan participants will be adversely impacted by the proposed rule.

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<sup>46</sup> PriceWaterhouseCoopers, [Study on the Impact of the Revision of the Insurance Mediation Directive \(ETD/2007/IM/B2/51\): Final Report](#), Prepared for the European Commission DG Internal Market and Services, May 23, 2011.

<sup>47</sup> See Regulatory Impact Analysis at p.109.

<sup>48</sup> Fox, Justin, "Investing: Inside the Robo-Adviser Wars", *Bloomberg View*, July 9, 2015.

<sup>49</sup> This assumes that the entire \$19 billion were retirement assets. It is likely that considerably less than \$19 billion is in robo-adviser IRAs. See ICI and [www.wsj.com/articles/putting-robo-advisers-to-the-test-1429887456](http://www.wsj.com/articles/putting-robo-advisers-to-the-test-1429887456) and <http://www.forbes.com/sites/samanthasharf/2015/01/28/can-robo-advisers-survive-a-bear-market/>.

<sup>50</sup> Based on a 2015 ACLI survey of life insurers. Survey respondents represent 81% of industry assets.



### 3. Insufficient analysis of direct costs.

The Department estimated that the cost of complying with the proposed rule would range from \$2.4 billion to \$5.7 billion over ten years, and assert that the higher end of the range is likely an overestimate. Shockingly, these estimates are based on two comment letters from trade associations (neither of which represent the life insurance industry), one of which is admittedly a rough estimate based on a survey of only 18 members and which was discounted by the Department because “the data appear to significantly overstate the cost of compliance”.<sup>51</sup> Relying on two comment letters and entirely ignoring the implementation and compliance cost imposed on the life insurance industry to estimate the cost of significant new regulation on a \$24.7 trillion industry is wholly insufficient. Further, the likelihood that a greater regulatory burden and new administrative and compliance costs would negatively affect positive innovation is not sufficiently considered in the initiative.

Additionally, the cost-benefit analysis does not adequately consider the time needed to implement the changes required to comply with the proposed rule. According to a recent industry survey, on average, life insurers will require at least 24 months to fully implement changes necessary to comply with the proposed rule, with 20% of companies requiring at least 36 months.

### 4. The cost-benefit analysis does not consider annuities.

One element of the Department’s regulatory impact analysis calculates the burden of fees and charges on the performance of selected investments. However, the Department’s analysis does not offer any direct evidence on the costs of conflict related to variable annuities, but rather applies academic studies on mutual fund costs to variable annuity products held in IRA accounts. In effect, because the Department presents no empirical analysis of any costs of conflicted advice for variable annuity products, the many cost estimates provided are not relevant to this sector of the market.

The Department also does not consider the benefits of variable annuity products for IRA holders. Variable annuities are not simply investments, but rather insurance products which can ensure well-being and financial security for life. According to a 2013 Gallup survey, 87 percent of annuity owners intend to use their annuity as a financial cushion for living beyond their life expectancy.<sup>52</sup> Variable annuities offer consumers a variety of insurance features, including the option of enhanced death benefits, accrual guarantees, and lifetime withdrawal benefits. Customers actively and voluntarily choose to elect various combinations of features tailored to their specific insurance needs and risk profiles. Survey data shows that annuity owners are pleased with the products they purchase. According to a recent LIMRA study, the vast majority of variable annuity owners are satisfied with their annuity, and five out of six deferred annuity owners would recommend an annuity to their family and friends.<sup>53</sup> Additionally, a recent study by Towers Watson found that among retirees of similar wealth and health characteristics, those with annuitized incomes are happiest.<sup>54</sup> Much like buying a house or choosing where to send your children to college, choosing the right annuity requires time, education, and guidance in order to make the right decision. The current Proposal may effectively eliminate or curtail these services.

As is the case in any competitive market, the costs of the variable annuity products vary in relation to the number of features selected. Some consumers choose to pay more in order to have greater risk protection and insurance benefits. According to a recent, ongoing study which relies on a unique sample of contract-level variable annuity qualified account data from 13 life insurance

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<sup>51</sup> See DOL cost-benefit analysis p. 157 for details.

<sup>52</sup> From: the Gallup Organization and Matthew Greenwald and Associates, 2013 Survey of Owners of Individual Annuity Contracts (conducted for the Committee of Annuity Insurers).

<sup>53</sup> LIMRA International, “LIMRA Secure Retirement Study: Knowledge of Annuities Boosts Ownership”, October 20, 2014.

<sup>54</sup> Nyce, Steve; Quade, Billie Jean, “Annuities and Retirement Happiness”, *Towers Watson Insider*, September 2012.



companies representing over 25% of the variable annuity industry, and which includes a representative sample of over 237,000 individual contracts, 40% variable annuity customers have chosen a living benefit, about one-third elected some form of enhanced death benefit, and 7% explicitly included an accumulation guarantee benefit which may guarantee growth rates or lock-in returns during the accumulation phase, before the owner chooses to annuitize.”<sup>55</sup>

Concerning surrender charges associated with insurance products like annuities, it appears that the Department presumes that: (1) all annuities have surrender charges; (2) all surrenders are for the full amount of the annuity; (3) annuity contracts never waive surrender charges in cases of hardship (such as serious illness or entering a nursing home); and, (4) surrender charges are applied 100% of the time. None of these presumptions are correct. In fact, if an annuity has a surrender charge it is contingent and incurs only if a contract is discontinued before the conclusion of the surrender period, which typically is about seven years.

In order to offer guarantees, protection, and insurance features, insurer’s are required to set aside reserves and hold capital. Given the nature of how insurers are required to invest and the nature of guarantees they offer, it is reasonable to discourage withdrawals for a period of time. Thus, if an annuity has a surrender charge, and if the contract owner does not surrender the contract prematurely, *surrender charges will not be incurred*. In fact, *very few contract holders pay surrender charges*. Based on contract-level data collected from life insurers, a recent ongoing study has found that 17.8% of annuity contracts do not have surrender fees and that a large majority of companies offer at least some contracts with no surrender fees. Of those contracts which do have surrender fees, when a surrender or withdrawal occurs *over 75% of annuity owners do not pay any surrender fees* (i.e. the median surrender fee paid is 0%).<sup>56</sup> Surrenders can be full, where the entire account is withdrawn, or partial, where only some portion of the account is withdrawn. Considering only partial surrenders, 81.7% paid no surrender fee. The average fee paid for all surrenders was 0.84% and for partial surrenders only 0.39%, 616 bps and 661 bps below the 7.00% the Department suggests is the norm. It is also important to note that, in the database referred to above, 100% of the firms that offer policies with surrender charges in the sample considered allowing contract holders to withdraw some percentage of their account balance each year with no fee. Additionally, in the sample, most firms that offer policies with surrender charges allow contract holders a contingency event waiver in the event of healthcare emergencies such as being checked into a nursing home.

Additionally, allegations of ‘churning’ also appear to be unfounded. According to the study referred to above, less than 2% of contracts issued in 2012, 2013, 2014, or 2015 have been fully surrendered. These findings demonstrate that the Department’s assumptions regarding surrender charges are grossly overstated and inflate the Department’s conclusions.

### **C. The Proposal unacceptably excludes the protections of the current regulatory framework from its quantification of need.**

In its justification for the Proposal, Department asserts that current regulatory protections are inadequate to address Department’s concerns about advice to retirement plan participants. We disagree with the wholesale disregard of detailed systems of significant protection from the analysis of regulatory need. The scope of the Proposal can be responsibly tempered with an objective integration of these fundamental protections and prophylactics in the redesign of the Department Proposal. It is contrary to the guiding statutory, executive, and judicial standards to impose new and redundant elements governing advice to plan participants that are already served quite well under complementary patterns of significant regulation.

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<sup>55</sup> NERA study, *forthcoming*.

<sup>56</sup> NERA study, *forthcoming*.

A detailed regulatory framework governs conduct in the sale of insurance products. A brief synopsis about these requirements provides helpful background to the issues under study. Life insurance companies and their associated persons currently fulfill a broad array of regulation administered by state insurance departments, the Securities and Exchange Commission (SEC), the Department, the Financial Industry Regulatory Authority (FINRA), and various state securities departments.

We offer input about this comprehensive regulatory framework to provide background for evaluating the benefits, needs and the costs of the Department Proposal. Business conduct standards regulate important aspects of the customer relationship, including suitability standards, disclosure, advertising, supervision, maintenance of customer account assets, data collection, training, compensation, and supervision of associated persons. In general, the federal securities laws and FINRA rules govern individual variable insurance contracts, and state insurance laws and regulations apply to fixed insurance products. In some cases, insurance products invoke both federal and state laws. Collectively, this body of regulatory provisions and oversight provide important consumer protection and strong enforcement tools.

We have attached an Appendix to highlight the extensive network of laws and regulations governing insurance product sales activities. Laws and regulations most relevant include:

- The NAIC Suitability in Annuity Transactions Model Regulation;
- FINRA Rule 2330 governing suitability and supervision in the sale of variable annuities;
- FINRA Rule 2320 governing non-cash compensation for variable products and mutual funds;
- The NAIC Annuity Disclosure Model Regulation;
- The NAIC Model Replacements Regulation, and state insurance regulations such as New York Regulation 60 which governs replacements;
- The NAIC Unfair Trade Practices Act and the prohibition on “unfair financial planning practices;” and,
- State insurance consulting laws governing the simultaneous receipt of product commissions and fees for insurance consulting services.

Life Insurers provide significant written disclosures at the point of sale to satisfy multiple regulators’ requirements and to help customers understand the nature of their various products and relationships. These disclosures include many product related materials (insurance sales illustrations, policy contracts, required “buyers guides,” prospectuses), marketing materials describing the firm’s offerings, documents that provide the terms for a brokerage or advisory relationship (brokerage account agreements, advisory account agreements, Form ADV, investment policy statements), and other required disclosures. There also is a considerable amount of post-sale disclosure depending on the nature of products and services provided, such as in-force insurance ledgers, transaction confirmations, periodic performance reporting for investment accounts, and updated Form ADV brochures. Several state and federal laws are designed to ensure appropriate sales practices and suitable recommendations consistent with customers’ financial objectives and best interests.

Insurance products are the only products in today’s financial marketplace with free-look provisions extending for 10, or more, days. These features give consumers a meaningful opportunity to carefully evaluate purchases after the sale and to change their mind for any reason, including cost factors, to receive a refund.

#### **D. The status of non-cash compensation regulation.**

Discussion surrounding the Department Proposal has referenced inappropriate influences of non-cash compensation. Many of the observations reflect isolated circumstances and appear ignorant of significant constraints on non-cash compensation practices. A brief explanation about the standards governing non-cash compensation may illuminate objective analysis leading to more balanced revisions to the Proposal.

Life insurers comply with regulations that regulate permitted non-cash compensation practices. FINRA Rule 2320 applies to broker-dealers selling variable insurance contracts and mutual funds, respectively, and limit non-cash compensation to: (1) gifts of up to \$100 per associated person annually; (2) an occasional meal, ticket to a sporting event or theater, or comparable entertainment; (3) payment or reimbursement for training and education meetings held by broker-dealers or issuers/sponsors for the purpose of educating associated persons of broker-dealers, so long as certain conditions are met; (4) in-house sales incentive programs of broker-dealers for their own associated persons; and, (5) contributions by any company or other FINRA member to a broker-dealer's permissible in-house sales incentive program, subject to the following explicit conditions:

- Non-cash compensation arrangements between a broker-dealer and its associated persons or a company and its sales personnel who are associated persons of an affiliated member, are conditioned on (1) the member's or non-member's non-cash compensation arrangement, if it includes variable contract securities, is based on the total production of associated persons with respect to all variable contract securities distributed by the member; (2) the non-cash compensation arrangement requires that the credit received for each variable contract security is equally weighted; (3) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (4) the record keeping requirement in the rule is satisfied.
- With regard to training and education meetings, the rule imposes strict additional conditions that require associated persons to obtain their broker-dealers' prior approval to attend the meeting and that (1) attendance by a member's associated persons is not conditioned by the broker-dealer on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by the rule; (2) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the broker-dealer, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings; (3) the payment or reimbursement is not applied to the expenses of guests of the associated person; and, (4) the payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement allowed under the rule. These limitations successfully assure that training and education meetings are appropriate.

Rule 2320 requires broker-dealers to maintain records of all non-cash compensation received by the broker-dealer or its associated persons in permitted non-cash compensation arrangements. The records must include: the names of the offerors, companies or other broker-dealers making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the broker-dealer and its associated persons with the rule.

Life insurers support the spirit and purpose of Rule 2320, and actively participated in its development through comment letters and constructive suggestions to achieve an effective, consumer-protective regulation.<sup>57</sup> ACLI regularly compiles and digests all FINRA disciplinary actions to capture data involving the distribution of variable products and broker-dealers affiliated with life insurance companies. In a survey of the past five years, there have been no reported disciplinary actions involving non-cash compensation associated with insurance product sales. These results demonstrate that FINRA Rule 2320 works efficiently and effectively.

#### **E. Commissions compared to fee-only investment advice.**

The Proposal is founded on a premise that commissioned products influence advisers to provide conflicted advice to the detriment of retirement plan participants. As such, the Proposal elevates fee-based advice and automated robo-advice systems as preferable alternatives because they are cheaper and aligned with the interests of retirement plan participants. These premises are incorrect in many cases. Recommendations under the Proposal may generate the least expensive product that may actually disserve and impair the participant's best interests. While fee-based or automated advice is appropriate for some individuals, it is not necessarily appropriate for all.

In truth, financial product recommendations and associated compensation arrangements are most objectively evaluated according to the unique facts and needs of each financial customer and the individual compensation arrangement. Financial advisers who obtain their compensation through annual fees based on assets under management ("wrap fees") would not likely recommend certain commission-based products, like annuities, because that purchase is not generally included within the assets under management on which the annual, recurrent fees are assessed by this type of fee-based financial adviser. Recurrent annual fees may be ill-suited to individuals with moderate assets needing little annual advice, and may exceed the total value of a commissioned-based adviser.

FINRA issued guidance about fee-based arrangements, recognizing that while fee-based programs are beneficial for some customers, "they are not appropriate in all circumstances."<sup>58</sup> FINRA instructs that

Firms must consider the overall needs and objectives of the customer when determining the benefits of a fee-based account for that customer, including the anticipated level of trading activity in the account and non-price factors such as the importance that a customer places on

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<sup>57</sup> In a similar regulatory vein, New York Insurance Code Section 4228 permits certain non-cash compensation practices for life insurance policies and annuities. New York Insurance Code Section 4228(e)(6) provides that:

A company, including any person, firm or corporation on its behalf or under any agreement with it, may pay or award, or permit to be paid or awarded, prizes and awards to agents and brokers pursuant to a plan of agent or broker compensation, provided that no single prize or award may exceed a value of two hundred fifty dollars, and that the total value of such prizes and awards paid or awarded to any agent or broker within a calendar year may not exceed one thousand dollars. Notwithstanding the foregoing, a company may also pay or award not more frequently than monthly a prize or award valued at not more than twenty-five dollars.

An implementing regulation places monetary limits on the value of prizes and awards that insurers can provide agents. The records must include: the names of the offerors, companies or other broker-dealers making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the broker-dealer and its associated persons with the rule. The New York Department of Financial Services website contains additional information about what steps life insurers must take to comply with Section 4228. <http://www.dfs.ny.gov/insurance/life/agcomp/life4228.htm>

<sup>58</sup> See Notice to Members 03-68, *Fee-Based Compensation-NASD Reminds Members That Fee-Based Compensation Programs Must Be Appropriate*, <http://www.finra.org/sites/default/files/NoticeDocument/p003079.pdf>.

aligning his or her interests with the broker. Additionally, firms must take into account the nature of the services provided, the benefits of other available fee structures, and the customer's fee structure preferences.<sup>59</sup>

As FINRA aptly observes, under some customer circumstances, compensation through commission arrangements may be more appropriate than fee-based arrangements. Quite correctly, FINRA explained that the appropriateness of fee-only financial arrangements should be evaluated on the unique circumstances of each customer and their financial needs. The same is true with evaluations of commissioned recommendations to purchase certain financial products like annuities.<sup>60</sup> There are many customers for whom annuities provide a valuable and appropriate means to achieving retirement security and guaranteed lifetime income. The fact that the salesperson was compensated by commissions does not diminish the important role annuities play in financial and retirement security. Commission-based compensation can be the most economical and appropriate form of compensation in advisory arrangements with consumers owning moderate amounts of retirement assets, and may be significantly less expensive than non-commissioned forms of compensation, such as asset management fees.

For all of these reasons, the Proposal's recurrent conviction that commission-based advice is always conflicted fails to fulfill the statutory, executive, and judicial mandates that the cost-benefit analysis should be balanced, and consider several solutions to proposed rulemaking.

#### **F. Correcting observations of fact and law.**

To ensure that agencies properly perform cost-benefit analysis and select the most cost-effective regulatory options, the White House Office of Information and Regulatory Affairs (OIRA) reviews agency cost-benefit analysis before proposed regulations become effective. To the extent views from that office reflect the January 15, 2015, White House Memorandum and the White House Fact Sheet<sup>61</sup> supporting the Department of Labor's proposed fiduciary rule, we offer some corrections of fact and law that may be helpful in the Proposal's cost-benefit analysis.

According to the memorandum "many firms recommend that prospective customers roll over 401(K) plan assets into an IRA without any knowledge of a customer's financial situation." Salespersons recommending the purchase of a variable annuity on an IRA roll over must fulfill FINRA's suitability and supervision Rule 2330, which requires the salesperson to obtain specific information from the customer (such as the customer's investment objectives, liquid net worth, financial sophistication, and tax status). This information is recorded on a customer account record that forms the basis of suitability determinations and supervisory review. Further, Rule 2330 requires the salesperson to make an

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<sup>59</sup> See *Fee-Based Questions and Answers*, <http://www.finra.org/industry/fee-based-account-questions-answers>. FINRA stated that

Certain potential problems have been identified through our examination program. For example, it is not always clear that customers receive adequate disclosure about the distinctions and features of fee-based versus commission-based accounts, including the differences in fee structures and that fees will probably be higher in a fee-based account if the level of activity is modest. Training and education at some firms are minimal, particularly in giving brokers guidance on how to evaluate whether a customer is appropriate for a fee-based account.

<sup>60</sup> Elisse B. Walter, who served as acting SEC chair, SEC Commissioner, and FINRA Senior Executive Vice President, noted:

In a nutshell, while fee based accounts can be a good thing, they are not always the right thing, or the best thing. We need you to look at each customer and determine what kind of fee works best for him or her. The Tully Report itself recognized that investors with low trading activity would probably be better off with a commission-based program that charges only when trades are made. See Elisse Walter, *Current NASD Regulatory Issues on Sales and Marketing* (Sept. 28, 2004) <http://www.finra.org/newsroom/speeches/092804-remarks-27th-annual-sia-sales-and-marketing-conference>.

<sup>61</sup> The [Fact Sheet](#) is entitled *Middle Class Economics: Strengthening Retirement Security by Cracking Down on Backdoor Payments and hidden Fees* and was released February 23, 2015.

affirmative determination that the “customer would benefit from certain features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or death benefit.”

Rule 2330 imposes a significant supervisory obligation requiring the broker-dealer’s registered principal to review the recommendation and consider the extent to which:

- the customer would benefit from certain features of a deferred variable annuity;
- the customer’s age or liquidity needs make the investment inappropriate; and,
- the customer involved an exchange of a deferred variable annuity: will incur surrender charges, face a new surrender period, lose death or existing benefits, have increased mortality and expense fees, appears to have a need for any potential product enhancements and improvements, or had another deferred variable annuity exchange within the preceding 36 months.

Likewise, the NAIC Suitability in Annuity Transactions Regulation imposes suitability and supervision standards for fixed annuity sales that are modeled on FINRA Rule 2330. This model regulation has been adopted in most jurisdictions. It is factually incorrect, therefore, that recommendations to purchase a fixed or variable annuity in an IRA roll over are done “without any knowledge of the customer’s financial situation.”

The memorandum states that “advisers steer investors into variable annuities and other complex products with high fees. Advisers can exploit their customer’s low level of financial literacy by recommending riskier and more complex investments.” (emphasis added). Most, but not all, contemporary fixed and variable annuities have surrender fees, which only occur if the customer cancels the contract within a specified period, usually about seven years on average. Annuities are purchased and sold as long-term accumulation vehicles for retirement security, not as short-term trading vehicles. If customers purchase the contract and hold it for the surrender period, they will not incur surrender charges. The White House memorandum does not appear to understand these mechanics.

As explained above, FINRA Rule 2330 and the NAIC Suitability in Annuity Transactions Model Regulation impose suitability and supervision standards that are designed to ensure that annuity purchases are appropriate for customers, including those with low levels of financial literacy.

Variable annuities provide permanent annuity purchase rate guarantees for purchasers upon annuitization, and many variable annuities provide optional riders for guaranteed benefits, such as lifetime payouts, withdrawals and death benefits. Variable annuities are designed to track the growth in the economy and provide protection against lower purchasing power due to inflation. The White House statement overlooks the fact that variable annuities can provide a valuable solution to the risk that consumers will have inadequate retirement assets. The memorandum’s statements associating variable annuity recommendations with high fees, exploitation of low financial literacy and riskier investments is generally incorrect.

The memorandum states that “consumer protections for investment advice in the retail and small plan markets are inadequate.” This unqualified observation is overbroad and ignores substantial consumer protections under the federal securities laws governing the activities of investment advisers and broker-dealers. Likewise, it ignores analogous protections under state laws such as the NAIC Suitability in Annuities Transactions Model Regulation. A fiduciary duty is currently enforced under the Investment Advisers Act for registered investment advisers that may be involved in recommendations about IRA roll over options. SEC Commissioner Daniel Gallagher addressed this observation in a recent public speech, noting that the memorandum’s statement



is not accompanied by any analysis or study of the current protections consumers receive from the regulatory oversight of brokers and investment advisers by the SEC and SROs-in fact, it blatantly ignores this comprehensive regulatory oversight. Indeed, the memo manages to avoid any mention of either the SEC or FINRA.<sup>62</sup>

The statement in the memorandum disregards other significant regulatory protections that currently exist under the federal securities laws.

The Fact Sheet references “outdated regulations” that provide consumer protections under IRA roll over recommendations. FINRA Rule 2330 and the NAIC Suitability in Annuities Regulation were recently adopted to significantly upgrade consumer protections in fixed and variable annuity sales.

The memorandum states that “loads encourage advisers to excessively churn their customers’ investments.” FINRA and SEC regulations explicitly prohibit churning of customer accounts. Indeed, FINRA Rule 2330 requires the adviser and supervisor to specifically consider whether a customer involved an exchange of a deferred variable annuity:

will incur surrender charges, face a new surrender period, lose death or existing benefits, have increased mortality and expense fees, appears to have a need for any potential product enhancements and improvements, or had another deferred variable annuity exchange within the preceding 36 months.

In response to this assertion in the memorandum, SEC Commissioner Gallagher noted “our (SEC) rules expressly prohibit brokers from churning customer accounts, and the SEC and SROS have sophisticated tools designed to monitor for such activity.”<sup>63</sup> Likewise, the NAIC Suitability in Annuities Transaction demands that recommendations, and accompanying supervision, are suitable. Churning would not be suitable.

#### **G. Concluding observations about the Proposal’s fulfillment of executive, statutory and judicial standards governing cost-benefit analyses in rulemaking.**

Our submission provides numerous suggestions that will more appropriately align the Proposal with the Department’s mission and the Proposal’s purpose in a manner that respects the proper balance of costs and benefits while also protecting retirement plan participants. Our suggestions achieve a constructive improvement to the original proposal and help the Department forestall post-adoption challenges to the adequacy of its cost-benefit analysis as required under executive, statutory and judicial standards.

The Proposal is exposed to judicial challenge because it:

- Fails to calculate the impairment to small retirement plans through the loss of advisory channels, as required under the Regulatory Flexibility Act;
- Presents inflexible approaches that are arbitrary and capricious under APA standards and bypassing less burdensome alternatives on a cost-benefit yardstick;
- Neglects the judicial precedent in the trio of recent cases rejecting SEC rulemaking due to defective cost-benefit analysis;
- Rejects or ignores the comprehensive pattern of regulation that imposes significant protections against conflicts of interest and erects prophylactics to protect retirement plan participants; and

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<sup>62</sup> See Remarks at The SEC Speaks by Daniel M. Gallagher (Feb. 20, 2015) at 3.

<sup>63</sup> See Remarks at The SEC Speaks by Daniel M. Gallagher (Feb. 20, 2015) at 3.

- Ignores the impact of the rule on small businesses as required under the Regulatory Flexibility Act.

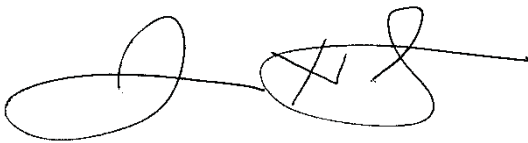
The Proposal's exposure to post-adoption legal challenges can be mitigated by incorporating our recommended modifications. In the end, the Proposal should fully evidence the 2011 Executive Order issued by President Obama and the spirit of his comments, which emphasized:

- "Sometimes, rules have gotten out of balance, placing unreasonable burdens on business—burdens that have stifled innovation;"<sup>64</sup>
- "As the executive order I am signing makes clear, we are seeking more affordable, less intrusive means to achieve the same ends—giving careful consideration to benefits and costs. This means writing rules with more input from experts, businesses and ordinary citizens. It means using disclosure as a tool to inform consumers of their choices, rather than restricting those choices;"<sup>65</sup> and,
- "We're looking at the system as a whole to make sure we avoid excessive, inconsistent and redundant regulation. And finally, today I am directing federal agencies to do more to account for—and reduce—the burdens regulations may place on small businesses."<sup>66</sup>

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On behalf of the ACLI member companies, thank you for consideration of these comments. We welcome the opportunity to discuss these comments and engage in a productive dialogue with the Department on this Proposal.

Respectfully,

A handwritten signature in black ink, appearing to read 'James H. Szostek', with a long horizontal line extending to the right.

James H. Szostek

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<sup>64</sup> Op-Ed, President Barack Obama, *Toward a 21<sup>st</sup> Century Regulatory System*, Wall Street Journal (Jan. 18, 2011). The President's Op-Ed coincided with his issuance of Executive Order 13,563, which set strict standards for cost-benefit analysis in federal agency rulemaking.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

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Fiduciary Rule**

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## **FINRA Rule 2330: Suitability and Supervision in the Sale of Variable Annuity Contracts**

Carl B. Wilkerson, Vice President & Chief Counsel-Securities & Litigation  
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### **I. Overview and Scope**

A. FINRA [Rule 2330](#), which governs suitability and supervision in the sale of variable annuity contracts, was approved by the SEC in 2008, and was under development since 2004. The rule evolved through six different stages, five at the SEC, and one at FINRA.

B. This outline will summarize the elements of Rule 2330, and discuss its administrative history to illuminate FINRA's purpose and intent.

### **II. Substantive Overview: Rule 2330 has four primary provisions**

A. Requirements governing recommendations, including a suitability obligation, specifically tailored to deferred variable annuity transactions;

B. Principal review and approval obligations;

C. A specific requirement for broker-dealers to establish and maintain written supervisory procedures reasonably designed to achieve compliance with the rule's standards; and,

D. A targeted training requirement for broker-dealers' associated persons, including registered principals.

### **III. The Rule's Requirements in Greater Detail**

A. Revised Rule 2330 established the following specific requirements:

1. *Recommendation Requirements.* When recommending a deferred variable annuity transaction, Rule 2330 requires broker-dealers and salespersons to have a reasonable basis to believe that the: customer *has been informed of, in a general fashion, the various features of the deferred variable annuity,*

- a) customer *would benefit from* certain features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit); and
- b) the deferred variable annuity *as a whole* and the underlying sub-accounts or riders are suitable for the particular customer.
- c) the particular deferred variable annuity that the registered representative is recommending, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and the riders and similar product enhancements are suitable (and in the case of an exchange, the transaction as a whole also is suitable) for the customer based on the information the registered representative is required to make a reasonable effort to obtain.

2. Revised Rule 2330 requires these determinations to be *documented and signed* by the salesperson recommending the transaction.

- a) Rule 2330 also require salespersons to make *reasonable efforts* to obtain information concerning customers' age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the variable annuity, investment time horizon, existing investment and insurance holdings, liquidity needs, liquid net worth, risk tolerance, tax status and other information used by the salesperson in making recommendations.

3. *Supervisory Review.* Rule 2330(c) requires that a principal review each variable annuity purchase or exchange within seven business days after the signed application arrives at the broker-dealer's office of supervisory jurisdiction in good order. A registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity.

- a) In reviewing the transaction, the registered principal would need to take into account the extent to which:
  - the customer would benefit from certain features of a deferred variable annuity;
  - the customer's age or liquidity needs make the investment inappropriate; and,
  - the customer involved an exchange of a deferred variable annuity: will incur surrender charges, face a new surrender period, lose death or existing benefits,
  - have increased mortality and expense fees, appears to have a need for any potential product enhancements and

improvements, or had another deferred variable annuity exchange within the preceding 36 months.

- Under Rule 2330, the supervisory review standards must be signed and documented by the registered principal that reviewed and approved the transaction.

4. *Supervisory Procedures.* Rule 2330 requires broker-dealers to establish and maintain specific written supervisory procedures reasonably designed to achieve and evidence compliance with the standards in Rule 2330. The broker-dealer must have procedures to screen and have principal review of the recommendations requirements in Rule 2330, and determine whether the salesperson has a particularly high rate of effecting deferred variable annuity exchanges.

5. *Training.* Under the proposal, broker-dealers would need to develop and document specific training policies or programs designed to ensure that salespersons recommending transactions, and registered principals who review transactions, in deferred variable annuities comply with the requirements of Rule 2330 and that they understand the material features of deferred variable annuities, including liquidity issues, sales charges, fees, tax treatment, and market risks.

6. *Automated Supervisory Review.* FINRA's submission on the rule indicated that the rule would not preclude firms from using automated supervisory systems, or a mix of automated and manual supervisory systems, to facilitate compliance with the rule.

a) In addition, FINRA delineated what, at a minimum, a principal would need to do if his or her firm intends to rely on automated supervisory systems to comply with the proposed rule.

b) Specifically, a principal would need to (1) approve the criteria that the automated supervisory system uses, (2) audit and update the system as necessary to ensure compliance with the proposed rule, (3) review exception reports that the system creates, and (4) remain responsible for each transaction's compliance with the proposed rule.

c) Finally, FINRA noted that a principal would be responsible for any deficiency in the system's criteria that would result in the system not being reasonably designed to comply with the rule.

7. *Tax Qualified Plans.* Rule 2330 does not apply to variable annuity transactions made in connection with tax-qualified, employer-sponsored retirement or benefit plans that either are defined as a "qualified plan" under Section 3(a)(12)(C) of the Exchange Act or meet the requirements of Internal Revenue Code Sections 403(b) or 457(b), unless, in the case of any plan, the broker-dealer makes recommendations to individual plan participants regarding the variable annuity.



#### IV. Review and Explanation of Rule 2330

##### A. Supervisory review standards changed

1. FINRA enlarged the time period for supervisory review to seven days after the signed application arrives at the broker-dealer's OSJ in good order.

a) Compare to *prior* draft: "Prior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but *no later than seven business days after the customer signs the application*, a registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity."

b) Compare to earlier draft: the third amendment required the principal must review and approve the transaction "[n]o later than *two business days following* the date when a member or person associated with a member *transmits a customer's application* for a deferred variable annuity to the issuing insurance company for processing or *five business days from the transmittal date* if additional contact with the customer or person associated with the member is necessary in the course of the review."

2. FINRA rationale: ensuring that all broker-dealers have adequate time to perform a thorough principal review of these transactions.

a) In view of the variety of features and provisions in connection with the issuance of deferred variable annuity contracts, FINRA became persuaded that principal review of variable annuity sales requires greater time than reviews of many other securities transactions.

b) The provision of a reasonable amount of time for pre-transmittal review, however, posed potential problems related to other rules concerning the prompt handling of customer funds.

(1) For instance, FINRA Rule 2330 states generally that member firms shall not make improper use of customer funds, and FINRA Rule 2820 specifically requires member firms to "transmit promptly" the application and the purchase payment for a variable contract to the issuing insurance company.

(2) Similarly, Rules 15c3-1 and 15c3-3 under the 1934 Act require certain member firms to promptly transmit and forward funds.

(3) Rules 15c3-1(c)(9) and (10) under the 1934 Act define the terms "promptly transmit and deliver" and "promptly

forward” funds as meaning “no later than noon of the next business day after receipt of such funds.”

3. FINRA solution to regulatory conflicts with prompt pricing standards:
  - a) FINRA asked for, and obtained from the SEC, regulatory relief regarding Rules 15c3-1 and 15c3-3 when the same circumstances exist. As a companion to the rule approval, the SEC provided an exemptive order from the prompt pricing provisions.
  - b) FINRA made clear that a broker-dealer that is holding an application for a deferred variable annuity and a non-negotiated check from a customer written to an insurance company for a period of seven business days or less would not be in violation of FINRA Rule 2330 if the reason that the application and check are being held is to allow a principal to complete his or her review of the transaction pursuant to proposed Rule 2330.

B. Recommendation requirements revised

1. FINRA revised proposed Rule 2330 to state that “[n]o member or person associated with a member shall recommend to any customer the purchase or exchange of a deferred variable annuity unless such member or person associated with a member *has a reasonable basis to believe* that the transaction is suitable in accordance with Rule 2310.”
2. FINRA is substituting the phrase “has a reasonable basis to believe” for “has determined,” which appeared in the prior draft of the rule.
3. FINRA rationale: FINRA softened the review requirement in response to comments that the reasonable basis standard was more strict than with other similar financial products.

C. Non-recommended transactions conditionally excluded. FINRA revised the rule conditionally so that it does not apply to non-recommended transactions, such as situations where the member is acting solely as an order taker. FINRA believed Rule 233c0 should not prevent a fully informed customer from making his or her own investment decision.

1. Conditional exclusion from rule, however.
  - a) A registered principal “may authorize the processing of the transaction if the registered principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the registered principal has not approved the transaction, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity.”
2. FINRA rationale:
  - a) Change allows a customer to decide to continue with the non-

recommended purchase or exchange of a deferred variable annuity notwithstanding the broker-dealer's belief that the transaction would be viewed as unsuitable if it had been recommended.

b) The new requirement that the principal independently determine that the transaction was not recommended adds another layer of protection. Requirement "should discourage salespersons from attempting to bypass compliance requirements for recommended sales by simply checking the 'not recommended' box on a form."

c) Customers must indicate an explicit intent to continue with the non-recommended transaction notwithstanding the unsuitability determination, which will help ensure that the customer's decision is an informed one.

D. "*Undue concentration*" standard eliminated. FINRA eliminated prior requirements that registered principals consider "the extent to which the amount of money invested would result in an undue concentration in a deferred variable annuity."

E. The annuity or deferred variable annuities should be evaluated in "the context of the customer's overall investment portfolio."

1. FINRA Rationale:

a) Requirement was unclear and could cause confusion. Because other provisions in Rule 2330 already capture the important aspects of this "undue concentration" determination, FINRA has eliminated it as superfluous.

F. Generic disclosure allowed

1. Under recommendation requirements, FINRA clarified that required disclosure may be generic and not specific to the product. Clarification now requires that "the customer has been informed, *in general terms*, of various features of deferred variable annuities. . . ."

2. FINRA rationale:

a) Simply a clearer statement of original rule's intent.

G. "Unique features" requirement relaxed and expanded

1. Provision now states that salesperson must have "a reasonable basis to believe that . . . the customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit."

2. FINRA Rationale:

a) FINRA accepted commenters' position that there are other financial products that have features similar to those of a deferred variable annuity,

so a requirement that the customer would benefit from the *unique* features was relaxed to benefiting from *certain* features.

b) Living benefits added to the list of certain features that may be beneficial for customer in addition to death benefit.

H. Required surveillance practices for replacement activities clarified

1. FINRA indicated that principal need not examine *every* transaction when salesperson has a potentially higher rate of replacement sales. FINRA emphasized instead review on a periodic basis via exception reporting rather than as part of the principal review of each exchange transaction

2. FINRA revised the supervisory procedures guarding against inappropriate replacement practices so that, “the member also must (1) implement surveillance procedures to determine if the member’s associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of this Rule, other applicable FINRA rules, or the federal securities laws (“inappropriate exchanges”) and (2) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges.”

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**NAIC Suitability in Annuity Transactions Model Regulation: A Coordinated Approach to Suitability and Supervision in the Sale of Individual Annuity Contracts**

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**I. NAIC Suitability and Supervision Responsibilities in NAIC Model Regulation Governing Individual Annuity Sales**

A. The National Association of Insurance Commissioners (NAIC) adopted several evolving sets of revisions to its model regulation governing suitability and supervision in the sale of individual annuity contracts.

1. The NAIC's initial regulation was entitled the Senior Protection in Annuity Transactions Regulation, and governed suitability and supervision in annuity transactions with "senior consumers" age 65 or older.
2. The NAIC's 2006 revision to this regulation applied it to all individual annuity sales. To reflect the broader application of the regulation, it was re-titled the Suitability in Annuity Transactions Model Regulation. This regulation incorporated suitability and supervision practices parallel to those under the federal securities laws and FINRA rules.
3. In 2010, the NAIC added further amendments to the Suitability in Annuity Transactions Model Regulation. Among other things, the 2010 NAIC revisions to the regulation established new restrictions on supervisory delegation to third-party and reliance on producer suitability recommendations, established a new producer training requirement (which must be completed by producers prior to their being able to solicit the sale of annuities), and expanded powers of Commissioners to levy sanctions and penalties.

B. The evolving iterations of the NAIC model regulation can be found at NAIC Model Regulation Service II-275-1 (2010). Over 30 states have implemented the 2010 version of the model regulation and two have proposed the regulation for adoption. 14 states have adopted the 2006 version of the regulation. Over time, these states are expected to incorporate the 2010 revisions as they update their regulations.

C. The accompanying Issues Status Chart following this outline on the Suitability in Annuity Transactions Model Regulation, the Annuity Disclosure Regulation, and the Senior-Specific Certification Model Regulation contains citations to state laws and regulations, with explanations, to each of the respective models.

**D. Because the 2010 amendments to the model regulation are built upon the original 2006 model, the 2006 model is discussed first. The 2010**

**modifications to the model are summarized separately below, following the 2006 regulation's summary.**

E. ACLI supports strong suitability standards to ensure annuity sales recommendations are suitable and will promote consumer confidence in making informed annuity purchase decisions.

## **II. Approach of the 2006 Revised NAIC Regulation**

A. The regulation establishes standards and procedures governing recommendations in annuity transactions, to ensure “that insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.”

B. The regulation imposes suitability and supervision duties for insurers and insurance producers, including requirements for maintaining written procedures and conducting periodic reviews of records to detect and prevent unsuitable sales practices.

## **III. Scope and Governing Framework of the 2006 Revised NAIC Regulation**

A. The regulation applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

1. “Annuity” means a *fixed annuity or variable annuity* that is *individually solicited*, whether the product is classified as an individual or group annuity [Section 5 (A)].
2. “Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice [Section 5(D)].

B. The regulation does not apply to annuity transactions involving:

1. Direct response solicitations where there is no recommendation based on information collected from the consumer under the regulation;
2. Contracts funding specified retirement plans:
  - a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
  - c) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred



compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

3. Settlements of, or assumptions of, liabilities associated with personal injury litigation or any dispute or claim resolution process; or

4. Formal prepaid funeral contracts.

#### IV. Duties Imposed Under the Regulation [Section 6]

A. **Suitability Standard:** In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

1. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

2. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

3. Note: this suitability standard directly parallels the general standard of FINRA Suitability Rule 2310(a), set forth at [http://nasd.complinet.com/nasd/display/display.html?rbid=1189&element\\_id=1159000466](http://nasd.complinet.com/nasd/display/display.html?rbid=1189&element_id=1159000466).

B. **Suitability Ingredients** [Section 6(A)]: Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

1. The consumer's financial status;

2. The consumer's tax status;

3. The consumer's investment objectives; and

4. Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

5. Note: the suitability ingredients above precisely track those in FINRA Suitability Rule 2320(b) set forth at

<http://nasd.complinet.com/nasd/display/display.html?rbid=1189&elementid=1159000466> .

6. An insurer or insurance producer's recommendation under the suitability standard and ingredients must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation [Section 6(c)(2)].

a) Neither an insurance producer, nor an insurer where no producer is involved, has any obligation to a consumer under the suitability standard [Section 6(a)] related to any recommendation if a consumer:

(1) Refuses to provide relevant information requested by the insurer or insurance producer;

(2) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(3) Fails to provide complete or accurate information.

(4) Note: these narrow exclusions directly parallel FINRA approaches to suitability in Rule 2310.

### C. Supervision Standard

1. For insurers:

a) An insurer either (i) shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with the suitability standards in the regulation is established and maintained, or (ii) shall establish and maintain such a system, including, but not limited to:

(1) Maintaining written procedures; and

(2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

b) To fulfill the supervision standard, an insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Section 6(D)(1) regarding insurance producers under contract with, or employed by, the third party.

(1) To utilize a third party for supervision, an insurer must make reasonable inquiry to assure that the third party is performing the functions required under the regulation, and must take reasonable action under the circumstances to

enforce the contractual obligation of the third party to perform the functions.

(2) An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(a) Annually *obtain a certification* from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(b) Based on reasonable selection criteria, periodically select third parties for review to determine whether the third parties are performing the required functions. The insurer must perform those procedures to conduct the review that are reasonable under the circumstances.

c) Insurers that contract with a third party to perform supervision and that comply with the certification and periodic review procedures will fulfill their supervisory responsibilities under the regulation.

d) Note: the supervisory approaches implemented in the regulation parallel those in FINRA Rule 3010(a).

e) No one may provide a certification under the regulations supervisory delegation unless:

(1) The person is a senior manager with responsibility for the delegated functions; and

(2) The person has a reasonable basis for making the certification

2. For insurance producers:

a) A general agent and independent agency either must (i) adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with the regulation, or (ii) establish and maintain such a system, including, but not limited to:

(1) Maintaining written procedures; and

(2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

3. Scope of required system of supervision for insurers and producers:
  - a) An insurer, general agent or independent agency is not required to review, or provide for review of, all insurance producer solicited transactions; or
  - b) An insurer, general agent or independent agency is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.
  - c) Note: these clarifications to the scope of the supervisory requirements parallel those applied under FINRA Rule 3010.
4. Deference to FINRA Suitability rule for variable annuity sales:
  - a) Compliance with FINRA's suitability rule will satisfy the regulation's suitability requirements for variable annuity recommendations.
  - b) Deference to FINRA suitability standards and practices in variable annuity sales does not, however, limit the insurance commissioner's ability to enforce the regulation.

#### **D. Recordkeeping**

1. Insurers, general agents, independent agencies and insurance producers must maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [a specified number of] years after the insurance transaction is completed by the insurer.
2. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
3. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

#### **E. Enforcement Powers and Mitigation Provisions**

1. To implement the regulation, the state insurance commissioner may order:
  - a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

- b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and
2. Any applicable penalty under the state code may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

## **V. Overview of the Modifications in the 2010 Revised NAIC Suitability in Annuity Transactions Model Regulation**

- A. Insurance producers are required to obtain information about the customer's needs and financial objectives when formulating a recommendation for an annuity purchase and must have reasonable belief that the recommendation is suitable. (NAIC Model Sec. 6(A)&(B)).
- B. Insurers must assure that a system is in place to supervise compliance with the Model, including review of producers' recommendations. (NAIC Model Sec. 6(F)(1)(d)).
- C. An insurer must conduct reviews of its records to assist in detecting and preventing violations of the regulation. (NAIC Model Sec. 6(F)(1)(e)).
- D. When an insurer contracts with a third party to establish a system of supervision, the insurer must monitor and audit, as appropriate, to assure that the third party is performing the required functions. (NAIC Model Sec. 6(F)(2)(b)(i)).
- E. When an insurer relies on a third party to perform required suitability functions, the third party, when requested by the insurer, must give a certification that it is performing the functions in compliance with the regulation. (NAIC Model Sec. 6(F)(2)(b)(ii)).
- F. Sales of annuities made in compliance with stringent federal securities rules pertaining to suitability and supervision (FINRA Rule 2330) satisfy the requirements under the Model. (NAIC Model Sec. 6(H)).
- G. An insurance producer shall not solicit the sale of an annuity unless the producer has adequate knowledge of the product and shall be in compliance with the insurer's product training standards. (NAIC Model Sec. 7(A)).
- H. Insurance producers who engage in the sale of annuities must complete an annuity training course approved by the appropriate State. (NAIC Model Sec. 7(B)).
- I. The Commissioner may order that an insurer or producer take appropriate corrective action for any consumer harmed by the insurer's, or producer's, violation of the regulation. (NAIC Model Sec. 8(A)(1)&(2)).

## Issue Status Chart: NAIC Annuity Disclosure, Suitability in Annuity Transactions, & Senior-Specific Certifications Model Regulations

(As of **May 8, 2015**)

The chart tracks state adoption of the NAIC Suitability (formerly Senior Protection) in Annuity Transactions Model Regulation, the NAIC Annuity Disclosure Model Regulation, Use of Senior-Specific Certifications and variations of the models. ACLI actively supports state adoption on a uniform basis of the NAIC Suitability in Annuity Transactions Model Regulation, the NAIC Annuity Disclosure Model Regulation, and Use of NAIC Senior-Specific Certifications. Bill text, digest and legislative history are available in ACLI's Legislative Tracker. Also, proposed and adopted regulations are available through ACLI's Advance Services and the Market Conduct Compliance Service.  
Contacts: Kristin Abbott 202.624.2162.

\* Annuities: Creating Guaranteed Income for Life (3/24/2014): This issue brief explains the important role annuities play in retirement as well as the strong public policy behind their current tax treatment. This document was produced in coordination with the Association for Advanced Life Underwriting (AALU), GAMA International, the Insured Retirement Institute (IRI), the National Association of Insurance and Financial Advisors (NAIFA), and the National Association of Independent Life Brokerage Agencies (NAILBA). Download the brief [Annuities: Creating Guaranteed Income for Life \(PDF\)](#).

**Additional Resources:** Annuity Issue Page; Annuity Compliance Service; Law Survey: Use of Disclosure Documents- Life Insurance and Annuities; Law Survey: Producer Use of Senior-Specific Certifications; Issue Status Chart: Individual Annuity Reserve Table.

### OVERVIEW OF STATE ACTIVITY TO DATE:

32 states have adopted NAIC Senior-Specific Certifications.

Alaska	Illinois	Minnesota	New York	Rhode Island	Virginia
Arkansas	Indiana	Missouri	North Carolina	South Carolina	Washington
Colorado	Iowa	Nevada	Ohio	Texas	West Virginia
Connecticut	Kansas	New Hampshire	Oklahoma	Utah	Wisconsin
Dist. of Columbia	Kentucky	New Jersey	Oregon	Vermont	Wyoming
Hawaii	Maryland				

15 states have adopted the NAIC Suitability in Annuity Transactions Model (2006 version).

Alabama	Georgia	Maine	Nevada	Pennsylvania
Arkansas	Indiana	Massachusetts	North Carolina	Tennessee
Arizona	Louisiana	Montana	Oklahoma	Virginia

4 states have proposed the NAIC Suitability in Annuity Transactions Model (2010 version).

Georgia	Maine	Massachusetts	Tennessee
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32 states have adopted the NAIC Suitability in Annuity Transactions Model (2010 version).

Alaska	Hawaii	Maryland	New Jersey	South Carolina	Wisconsin
California	Idaho	Michigan	New York	South Dakota	Wyoming
Colorado	Illinois	Minnesota	North Dakota	Texas	
Connecticut	Iowa	Mississippi	Ohio	Utah	
Dist. Of Columbia	Kansas	Nebraska	Oregon	Washington	
Florida	Kentucky	New Hampshire	Rhode Island	West Virginia	

1 state has adopted the NAIC Senior Protection in Annuity Transactions Model Regulation.

Delaware
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2 states have other suitability standards.

Missouri	Vermont
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2 states have NO suitability standards.

New Mexico	Puerto Rico
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23 states have adopted variations of older versions of the NAIC Annuity Disclosure Model Regulation

Alaska	Idaho	Montana	North Carolina	Texas
Arizona	Kentucky	Nevada	North Dakota	Washington
Arkansas	Maine	New Hampshire	Oregon	Wisconsin
Florida	Maryland	New Mexico	Pennsylvania	
Hawaii	Missouri	New York	South Carolina	

10 states have adopted the recent version of the NAIC Annuity Disclosure Model Regulation

Alabama	Iowa	Oklahoma	West Virginia
Colorado	New Jersey	Rhode Island	
Georgia	Ohio	Utah	

(Updates in **bold**. Shaded boxes denote activity prior to 2015.)

Updates This Publication Include: CT, TN, WV

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>ALABAMA</b>					
Reg.482-1-129		X		Effective: 03/01/15	Amends annuity disclosure rule to expand the definitions section, add a section on standards for annuity illustrations, and replace the existing buyer's guide with an annuity illustration example. Incorporates the 2011 revisions to the NAIC's Annuity Disclosure Model Regulation.
Ch. 482-1-129.05		X		Adopted 2006.	Similar to the NAIC Annuity Disclosure Model.
AL ADC 830-X-3-.28			X	Adopted 2008.	Includes portions of NAIC Senior-Specific Certifications Model
AL Admin. Code 482-1-137	X			Adopted 2006.	Similar to the 2006 NAIC Suitability Model.
<b>ALASKA</b>					
Reg. 3 AAC 26.770+	X			Reg. Effective: 10/16/11	Similar to the 2010 NAIC Suitability Model.
Adopted Regulation 3 AAC 26.750 + Notice Of Proposed Changes In The Regulations Of The Division Of Insurance		X	X	Effective July 25, 2008	The Insurance Division has published a Notice of proposed new rules relating to the use of senior-specific certifications and professional designations in connection with a solicitation, sale or purchase of, or advice made in connection with a life insurance or annuity contract by an insurance producer.
Reg. 3 AAC 26.820 +			X	Effective: 6/28/09	Establishes standards and requirements for the use of senior-specific certifications and professional designations in the solicitation, sale, purchase, or advice made in connection with a life insurance or an annuity contract by an insurance producer. The rules substantively follow the NAIC model regulation, except the rules use the term annuity "product" instead of "contract", includes a non-model provision in 3 AAC 26.825(a)(2) adding "oral statements or representation", and omits NAIC Model language, "There is a rebuttable presumption", at the beginning of 3 AAC 26.825(c).

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>ARKANSAS</b>					
AR ADC INS 82	X			Effective: 7/15/09	Similar to the 2006 NAIC Suitability Model.
Rule 96			X	Effective: 7/15/09	Establishes standards and requirements for the use of senior-specific certifications and professional designations by an insurance producer in the sale of life insurance and annuities.
Rule 98		X		Effective: 7/15/09	The new annuity disclosure rule by and large adheres to the NAIC model. It deviates from the model in that it adds a provision to the disclosure document and buyer's guide standards stating that disclosure statements must be signed and dated by the insurance producer and maintained by the producer and issuing company for five years. And, as in the revised version of the rule, the scope now incorporates pre-need policies.
<b>ARIZONA</b>					
Rev. Stat. Ann. §§ 20-1243+	X			Enacted 2006. (HB 2162)	Similar to the 2006 NAIC Suitability Model.
Rev. Stat. Ann. §§ 20-1242+		X		Enacted 2003.	
Admin. Comp. R20-6-212.01		X		Adopted 2004.	
<b>CALIFORNIA</b>					
CA Ins. § 10509.911	X			Signed by Governor: 9/20/11	Similar to the 2010 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Dept. of Insurance Notice				Dated: 12/6/11	Notice to licensed insurers clarifies California Department of Insurance annuity training requirements. Insurance producers shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. The hours of training needed before soliciting consumers to sell annuities and hours of training needed for license renewal are also outlined in the notice. The new requirements become effective January 1, 2012.
<b>COLORADO</b>					
Reg. 4-1-12		X		Effective: 06/01/14	The amendments to the annuity disclosure regulation include, but are not limited to, adding a new section on standards for annuity illustrations, expanding the definitions section, and updating the enforcement, severability and incorporated materials sections, as well as adding an annuity illustration example.
Reg. 4-1-2		X		Effective: 07/01/14	The amendments to the rule on advertising and sales of life insurance and annuities include, in addition to technical changes, adding new disclosure requirements and deleting the section on conflict with other laws or regulations.
Bulletin B-4.67		X		Dated: 1/14/14	This bulletin informs insurers that the NAIC has revised its Buyer's Guide to Fixed Deferred Annuities and that the state plans to revise its regulation concerning requirements for annuity transactions to refer to the 2013 NAIC Buyer's Guide for Deferred Annuities. It also urges insurers to examine the revised buyer's guide and make any essential changes to preserve compliance with Colorado insurance regulations.
3 CO ADC INS 702-4:4-1-11	X			Effective: 8/1/11	Similar to the 2010 NAIC Suitability Model.
Reg. 4-1-12 ACLI Comment Letter on proposed amendments		X		Effective 1/1/07.	Offers criteria for the disclosure of specified data about annuity contracts to make certain that purchasers comprehend essential aspects of the contracts. Re-proposed to change sections including requiring a free look period of at least 15 days at or prior to the time of application in the absence of a Buyer's Guide and a disclosure document and having the reg. apply to contracts sold on or after 1/1/07, the same day the amended reg. becomes effective. ACLI submitted a <a href="#">comment letter</a> on the proposed amendments to <a href="#">Regulation 4-1-12</a> . The proposed amendments would adopt the latest updates to the NAIC Annuity Disclosure Model Regulation.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Reg. 1-2-18			X	Effective: 6/1/09	<p>ACLI's letter focuses on one portion of the proposed amendments which the NAIC has indicated states should consider omitting. ACLI's letter urges omission of the language.</p> <p>Establishes standards and requirements for the use of senior-specific certifications and professional designations in the solicitation, recommendation, sale or acquisition of life insurance and annuity products.</p>
<b>CONNECTICUT</b>					
H. 6772		X			<p>Introduced February 11, 2015. Would require an insurance company to provide disclosures to employees and retirees of an employer when the company issues a group annuity contract to provide retirement benefits. Would protect amounts payable under the issued annuity contract from creditors of participants and beneficiaries.</p> <p><b>*Passed House on April 22, 2015. To Senate for consideration. Would place restrictions and disclosures on pension derisking transactions. Section 1, which has now been deleted, contained onerous limitations on these transactions: providing a disclosure to beneficiaries stating that they will no longer have ERISA protection; providing detailed annual statement from the insurer regarding assets; and the limitation that derisking transactions must be approved by the commissioner. Section 2 of the bill, which is all that now remains, would protect annuity proceeds from creditors.</b></p>
Reg. 38a-432-1 +	X			Reg. Effective: 2/18/12	Similar to the 2010 NAIC Suitability Model.
Reg. 38a-432b-1 +			X	Effective: 7/7/2010	Establishes standards and requirements for the use of senior-specific certifications and professional designations in the sale of insurance, including annuities.
<b>DELAWARE</b>					
Reg. 1214	X			Adopted 2005.	Similar to the 2003 NAIC Senior Protection Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>DISTRICT OF COLUMBIA</b>					
DC Mun. Regs. Tit. 26-A §8401	X			Reg. Effective: 12/24/10	Similar to the 2010 NAIC Suitability Model.
Rule 5800+			X	Effective: 7/30/10	Substantially similar to NAIC Senior Specific Certifications Model.
<b>FLORIDA</b>					
Rule 69B-162.011	X			Effective: 10/21/14	The amendments modify provisions on annuity suitability and disclosure to conform to revisions enacted by <a href="#">SB 166</a> that revised consumer protection laws relating to the sales of annuities by incorporating the 2010 NAIC Suitability in Annuity Transactions Model Regulation. They include extending protections previously afforded only to senior consumers to consumers of any age, revising Forms DFS-H1-1980 and DFS-H1-1981 to reflect the standards, procedures and guidelines of the model regulation, and changing the title to better reflect the proposed rule's scope.
Notice of Correction					
Update and Clarification					
S. 166	X			Signed by governor: 6/14/13	* Amendments to Rule 69B-162.011, relating to suitability and disclosure in annuity investments were adopted on October 1, 2014. The forms (Disclosure and Comparison of Annuity Contracts and Annuity Suitability Questionnaire) incorporated in the rule were adopted as well. The rule and forms will become effective on October 21, 2014.
ACLI Comment Letter				Effective: 10/1/13	Similar to the 2010 NAIC Suitability Model.
OIR Informational Memorandum					Provides that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers. Increases the period of time that an unconditional refund must remain available with respect to certain annuity contracts. Makes such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age; consistent with NAIC model guidance; incorporates Florida consumer protections; required suitability and comparison forms, cover page, limitation on deferred sales charges.
					* On August 6, ACLI staff remitted a compilation of member company inquiries (PDF) regarding the implementation of S. 166, Suitability in Annuities Transactions, to both the Department of Financial Services, Division of Agent and Agency Services and the Office of Insurance Regulation senior staff. ACLI staff was advised on August 26 that regulatory legal staff are still working on



Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
S. 2176		X		Effective: 1/1/11	<p>responses which they will provide to ACLI staff as soon as possible.</p> <p>On January 22, 2014, ACLI staff sought clarification from Department of Financial Services, Division of Agent and Agency Services, on the applicability of the "FINRA Safe Harbor" provision.</p>
Prop. Rule 69B-215.235			X	Effective: 11/16/11	<p>Among other things, requires that the buyer's guide for fixed annuities be in the form provided by the National Association of Insurance Commissioners Annuity Disclosure Model Regulation and authorizes the use of policy summary as part of prospectus for variable annuities until the NAIC or the department develops a buyer's guide</p> <p>The new rule on the use of designations clarifies that the only legal designations that may be used are ones permitted by established organizations retaining published criteria and practices guaranteeing the constant proficiency and ethical behavior of members or conferees and forbids the use of self-bestowed or baseless designations.</p>

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<p>Rule 69B-162.011 Comment Letter</p>	<p>X</p>	<p>X</p>		<p>Effective: November 15, 2009*  *Suitability Rule and Forms adopted on October 27<sup>th</sup> and as published on Florida Administrative Weekly website and FL DFS site stipulates an effective date of November 15. This is a clerical error on the part of Secretary State's office. The statute, which controls, provides an effective date of January 1, 2009 or 60 days following the adoption of the rule, which would be December 25<sup>th</sup>. The Joint Administrative Procedure Committee has advised FL DFS that the effective date provided in the rule is a "nullity" and should be disregarded. FL DFS is considering a General Bulletin to this effect.</p>	<p>Establishes the duties required of insurers and insurance producers in the sale of annuity contracts to senior consumers, including the purchase, exchange, and replacement of such contracts. Also incorporates by reference an annuity suitability questionnaire and an annuity contracts disclosure form.</p>
<p>S. 2082</p>				<p>Signed by Governor: 6/30/08.</p>	<p>Effective upon this act becoming a law, Department of Financial Services may adopt rules to implement this act. Sec. 9 of this act and such implementing rules shall take effect 60 days after date on which the final rule is adopted or 1/1/09, whichever is later.</p>

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Stat. § 626.99				Enacted 1982 and 1991.	Requires delivery of Annuity Disclosure Model Buyer's Guide.
<b>GEORGIA</b>					
Proposed Repeal and Readoption of Regulation 120-2-94-.01 +	X				The proposed amendments would repeal the suitability in annuity transactions regulation, readopting it to incorporate the NAIC's most recent model on suitability in annuity transactions.
ACLI/IRI teleconference with DOI staff		X		Effective: 1/7/14 Implementation Date: 3/1/14	On Friday, January 30, ACLI staff and Insured Retirement Institute (IRI) staff hosted a teleconference with Department of Insurance (DOI) senior staff regarding member company concerns with the recent adoption of Annuity Disclosure Regulation 12-2-73. The new rule, effective January 1, 2015, provided for the adoption of the recently updated National Association of Insurance Commissioners' Annuities Buyer's Guides (Guide for Fixed and Variable, Deferred Fixed & Variable Only). As part of the department's adoption under 120-2-73, struck from the scope of the then extant regulation was the exception for variable annuities since the change to the regulation's appendix incorporated the variable annuities buyer's guide. Unfortunately, with that strike of the exception, the regulation now otherwise requires the provision of a consumer variable space for consumer education and is not required in any other state. On the teleconference, based on ACLI and IRI input, DOI said that, in the short term, they are looking at developing a department directive to provide that a prospectus will serve as a contract summary for the purpose of compliance with the regulation. In the long term, they would like to amend the current rule to reflect that same policy, exempting variable annuity products from the contract summary requirement.
DOI Comments					The amendments repeal the Buyer's Guide to Annuities, an appendix to the regulation on disclosure requirements, and adopt a new appendix that incorporates an updated NAIC Buyer's Guide to Annuities.
Reg. 120-2-73-.05					Insurance Department to correct oversight from recently promulgated amended Annuity Buyer's Guide regulation in an upcoming hearing. Department advises that companies are free to include omitted language in their distributed guides in the interim.
ACLI Comments					Variation of the NAIC Annuity Disclosure Model.
GA Proposed Reg. 120-2-73-.05				Enacted 1996.	
Bulletin 15-EX-1				Adopted 2006.	Similar to the 2006 NAIC Suitability Model.
Admin. Comp. ch. 120-2-73					
Rule Ch. 120-2-94	X				

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>HAWAII</b>					
HI Rev. Stat. Ann. §431:10D-621					Similar to the 2010 NAIC Suitability Model.
S. 2768	X			Signed by the Governor: 4/24/12 Retroactive Effective Date: 1/1/12	Section 14 amends existing producer training requirements pertaining to annuity sales, pursuant to NAIC Model requirements. * After working with the Insurance Division for well over a year, on August 19, 2013, ACLI and other insurance industry representatives were able to reach an agreement with the division regarding a life insurer's role and responsibilities in verifying a producer's compliance with the annuity training required by S. 2768, passed by Hawaii's legislature in 2012. The insurance division had earlier announced that it would be amending its producer appointment form (Form APPT – Rev, 2/16/2012) to include a footnote stating that by signing the form the life insurer verifies that the appointed producer has completed the training or would complete that training "before soliciting the sale of annuity products". As part of the parties' agreement the insurance division agreed to remove the footnote from the form. A revised "Notice of New Appointment" form has now been posted on the division's website.
S. 1278	X		X	Signed by the Governor: 6/14/11	Adopts both the NAIC's Annuity Suitability and Senior Designations Models.  Revised Memorandum 2011-2LIC Informs insurance producers that the Insurance Division will recognize annuity training completed in another jurisdiction.
S. 1008	X			Signed by governor 7/5/07. Effective 1/1/08.	Enacts the NAIC's Suitability in Annuity Transaction Model Regulation. Amends "general agent" to read "managing general agent". Specifies applicability to an insurer, general agent, independent agencies, or a producer in terms of the penalty being reduced or eliminated for corrective action of a violation. Adds "failure to obtain information" as definition of unfair methods of competition and unfair or deceptive acts or practices. Provides that nothing in this Act shall be construed to supersede in any manner any provision of the Uniform Securities Act and nothing shall affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the act's effective date.
Stat. § 431:10D-601 et seq.		X		Enacted 2006 (SB 2434)	Similar to the NAIC Annuity Disclosure Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>IDAHO</b>					
Bulletin 13-06		X		Dated: 12/13/13	This bulletin informs insurers and producers that they may satisfy the buyer's guide statutory requirement by providing consumers with either the NAIC Buyer's Guide to Fixed Deferred Annuities with Appendix for Equity-Indexed Annuities last revised in 2007 – ANB-LE (1999, 2007), or the 2013 NAIC Buyer's Guide for Deferred Annuities – Fixed – ANB-LE (2013).
ID Admin. Code 18.01.09.001	X				Similar to the 2010 NAIC Suitability Model.
S. 1327		X		Signed by Governor: 4/8/10 Effective: 7/1/10	Adds s. 41-1941 to adopt key provisions of the NAIC model annuity disclosure law and allow the Director to adopt the remainder of the model by rule. The law contains two variations from the model: a 20-day free look provision reflecting current law, and a provision added by the Department of Insurance that requires the producer and company to obtain a signed copy of the disclosure document from the applicant.
H. 411	X			Signed by Governor: 3/19/08. Effective: 7/1/08.	
Proposed Regulation text: ID Prop Reg 18.01.09 Temporary Rule: ID Ad Reg Temporary 18.01.09	X			Comments by: 8/27/08 Effective: 7/1/08	The proposed amendments to the annuity suitability rule would remove the references to seniors, making it pertinent to all consumers.
Stat. § 41-1940	X			Enacted 2005. (HB 117)	From the NAIC Senior Protection Model, contains Section 6A-C "Duties of Insurers and Insurance Producers."
Rule IDAPA 18.01.09	X			Adopted 2006.	Language deviates from the NAIC model in section addressing exempted contracts. Excludes Sect. 6D, system of supervision, and Sect. 6E, compliance with NASD conduct rules. Applies to consumers over 65.
<b>ILLINOIS</b>					
Rule 3120.01 +	X			Reg. Effective: 9/26/11	Similar to the 2010 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Bulletin 2011-13	X			Dated: 10/31/11	Bulletin clarifies when amendments to Rule 3120 Suitability In Annuity Transactions become operative. The bulletin states that producers who hold a life insurance line of authority and intend sell annuities have until July 1, 2012, to complete the training requirements. The bulletin also states that insurer supervisory requirements contained in the regulation also become operative on July 1, 2012.
S. 1607			X	Signed by Governor: 8/23/11	Adopts the NAIC Senior-Specific Certifications Model.
Rule 130.855			X	Effective: 8/23/11 Effective: 9/8/09	The amendments to the securities rule add new provisions concerning the treatment by financial advisers of senior certifications and professional designations based on the NASAA Model.
<b>INDIANA</b>					
760 IAC 1-79-1 to 1-79-4			X		Sets forth standards to safeguard consumers from deceptive and duplicitous marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale, or purchase of, or advice made concerning, a life insurance or annuity product. Adopts a substantially similar version of the NAIC Model.
Prop. Rule 760 IAC 1-79			X	Hearing date: 5/7/12	The proposed new rule sets forth standards to safeguard consumers from deceptive and duplicitous marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale, or purchase of, or advice made concerning, a life insurance or annuity product. Would adopt a substantially similar version of the NAIC Model.
760 IN Admin. Code 1-72-1	X			Signed by the Governor: 4/6/11	Similar to the 2006 NAIC Suitability Model.
Bulletin 184	X			Annuity Training Course Requirement (Agents Licensed Prior to 1/1/12): 7/1/12 Annuity Training Course Requirement (Agents Licensed After 1/1/12): Immediate	Provides clarification to HB 1015 and HB 1486 regarding the effective dates for the implementation of the training provisions and the requirement for variable licensing. The Bulletin also provides clarification for the insurer training provisions as well as an exemption to the variable licensing provisions for those producers who only sell, solicit or negotiate to pension, retirement, or profit-sharing plans. The ACLI worked closely with the Department on the details of the Bulletin, and in particular, sought further clarification



Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Rule 710 IAC 4-10-2			X	Product Specific Training Requirement: 1/1/12 Effective: 6/28/10	on a reasonable effective date as well as the exemption to the variable licensing law.  The new rule, based on the North American Securities Administrators Association model rule, prohibits the use of senior specific designations or certifications to imply special training or knowledge when advising senior citizens or retirees about investing, purchasing or selling securities.
<b>IOWA</b>					
Best Practices Letter	X				On April 14, the Insurance Division sent a "best practices" letter to all Iowa licensed annuity sellers. The letter provides guidance from the division on the interpretation of 191 IAC 15.75, suitability in annuity transactions. It describes areas a report should contain to determine the effectiveness of the Supervision System.
Bulletin 13-03		X		Date: 10/21/13	This bulletin alerts insurers about the three new versions of the deferred annuity buyer's guide adopted by the NAIC. Insurers and producers are encouraged to use the appropriate newer versions as soon as possible although they can use an appropriate version of the new NAIC deferred annuity buyer's guide or the older version of the NAIC deferred annuity buyer's through March 31, 2014. After that date, companies and producers selling any fixed annuity and those selling variable annuities or other securities registered products must use an appropriate version of the new NAIC annuity buyer's guide.
Bulletin 13-01		X		Date: 4/3/13	This bulletin provides guidance concerning provisions on annuity disclosure requirements including standards for annuity illustrations, the Buyer's Guide, and the content of disclosure documents. This bulletin supersedes prior memos and related e-mail.
Rule 191-15.61+		X		Effective: 4/11/12	Amendments bring the annuity disclosure rules of the unfair trade practices chapter into conformity with the NAIC model. The amendments include expanding the section on applicability and scope, adding new definitions and specifying requirements for providing the Buyer's Guide to mail solicitation and Internet applicants. The amended rule contains various compliance dates.
Rule 191-15.68+	X			Effective: 01/01/11	Similar to the 2010 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Bulletin 09-04	X				On March 26, 2009, the Division of Insurance issued Bulletin 09-04 addressing Life Insurance and Annuity Sales Practices, Replacements and Suitability. ACLI has received several questions concerning the reporting requirements. It appears the Division will rely on companies to implement their own monitoring system. Following is guidance we received from the Division.
Admin. Code §191-10.19(522B) & §191-15.8(3)			X	Adopted 2008 Effective: 1/1/09	Producers shall comply with rule 191-10.19(522B) in using senior-specific certifications and professional designations in the sale of life insurance and annuities.
Admin. Code §191-15.8					General suitability standards not based on NAIC Senior Protection Model. Reg. 191-15.68+ [507B] (below) amended § 191-15.8 to remove references to annuities.
Admin. Code §§ 191-15.61 to 191-15.67		X		Adopted 2003.	
<b>KANSAS</b>					
Reg. K.A.R. 40-2-14a Policy and Procedure Regarding Suitability in Annuity Transactions	X			Reg. Effective: 6/1/13	Amended regulation adopts by reference the November 29, 2012, version of the Kansas Insurance Department's "Policy and Procedure Regarding Suitability in Annuity Transactions." The amended regulation brings Kansas law into conformity with the revised NAIC Model.  Similar to the 2010 NAIC Suitability Model.
Reg. K.A.R. 40-9-23			X	Effective: 1/14/11	Adopts the NAIC model regulation on the use of senior-specific certifications and professional designations in the sale of life insurance and annuities. Earlier this year Kansas had already issued a policies and procedures document which adopted the substance of the NAIC model. Regulation 40-9-23 merely codifies the NAIC model as law.
Reg. K.A.R. 81-3-6+			X	Effective: 5/22/09	The amendments to the Office of the Securities Commissioner's regulations make it disreputable for a broker-dealer, agent, investment adviser or investment adviser representative to use a professional designation or certification that generates a deceptive inference that the user has specialized instruction in counseling senior citizens. They set out the fraudulent and unprincipled procedures that comprise justification for discipline. The amendments are based on the March 2008 North American Securities Administrators Association Model Rule on the Use of Senior-Specific Certifications and Professional Designation.

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<b>KENTUCKY</b>					
Memo: Annuity Suitability Training	X			Dated: 12/14/11	Memo outlines the product specific continuing education and training requirements for any resident insurance producers who sell, solicit, or negotiate the sale of an annuity. The memo states that insurers who offer annuities shall get verification that producers receive training, maintain records under Kentucky's record retention requirement, and make the verification available to the Commissioner upon request.
Reg. 806 KAR 9:020 ACLI Comments			X	Effective: 12/2/11	Amended regulation includes some of the provisions in the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations In The State of Life Insurance and Annuities (NAIC 278-1). Specifically, it adds a provision stating that a person shall not imply or purport to convey greater skill or knowledge advising seniors in the sale or solicitation of life insurance or annuity products (Section 2(3)). The regulation also includes new language regarding the "combination of words" and exemptions for certain job titles (similar to sections C and D of the NAIC Model). The regulation does not adopt the entire NAIC Model and the amendments are not word-for-word NAIC.
Reg. 806 KAR 12:120 ACLI Comments	X			Reg. Effective: 1/1/12	Similar to the 2010 NAIC Suitability Model.
Reg. 806 KAR 9:220	X			Reg. Effective: 10/7/11	Amends regulation to require insurance producers who sell, solicit or negotiate the sale of annuities to complete four hours of training in the classification and use of annuities, taxation, sales practices, and replacement and disclosure requirements.
Reg. 808 KAR 10:042			X	Effective: 2/6/09	Establishes standards and requirements for use of senior-specific certifications and designations in sale of securities.
Reg. 806 KAR 12:150		X		Adopted 2007 Effective 1/1/08	This new version was amended to incorporate comments received after hearings were held on June 26 with comments requested by July 6.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>LOUISIANA</b>					
37 LA ADC Pt XIII, §11703	X				Similar to the 2006 NAIC Suitability Model.
<b>MAINE</b>					
Proposed Rule R. 02-031 Ch. 917	X				The proposed amendments to the rule on suitability in annuity transactions would provide a significantly altered framework for determining annuity suitability, require producer training and require, where feasible, suitability standards consistent with those imposed by FINRA. The amended rule would also reflect 2010 changes to the NAIC Suitability in Annuity Transactions Model Regulation.
ACLI Comments					
Proposed amendments to Rule Chapter 915 and to Rule Chapter 917	X	X			The Bureau of Insurance has proposed amendments to <a href="#">Rule Chapter 915</a> (Annuity Disclosure) and to <a href="#">Rule Chapter 917</a> (Annuity Suitability). The purposes of the proposed amendments to Rule 915 are to incorporate National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model Regulation requirements relating to illustrations and recordkeeping relating to disclosures, as well as to repeal the required use of an outdated NAIC Annuity Buyer's Guide and replace it with current versions. The bureau will hold a public hearing on the proposed amendments to Rule 915 at the Department of Professional and Financial Regulation building, 76 Northern Avenue, Gardiner, Maine at 9:00 a.m. on December 17. The proposed amendments to Rule 917 would establish suitability standards and producer training requirements with respect to annuity recommendations made by insurance producers or companies. They are intended to reflect changes made in 2010 to the NAIC Suitability in Annuity Transactions Model Regulation in light of the Harkins-Meek Amendment to the Dodd-Frank Act; that amendment provides a "safe harbor" from treatment of equity-indexed annuities as federal securities in jurisdictions which have adopted the 2010 amendments to the NAIC Suitability in Annuity Transactions Model Regulation.
ACLI Comment Letter (Disclosure)					
ACLI Comment Letter (Suitability)					
Bulletin 389		X		Dated: 10/8/13	This bulletin alerts insurers and producers that until the Insurance Bureau officially revises Maine Rule 915 (Annuity Disclosure), Section 5 (Standards for the Disclosure Document and Buyer's Guide), they are permitted to use the NAIC's recently revised Buyer's Guide in their annuity disclosures in place of the outdated 1998 Buyer's Guide.
Ins. Reg. ch. 915		X		Adopted 2004.	
Code ME R. 02-031 Ch.	X			Adopted 2007.	Similar to the 2006 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
917 §2					
<b>MARYLAND</b>					
Reg. 31.09.12.01 +	X			Reg. Effective: 11/1/11 Product Specific Training Requirement: 11/1/11 Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date): 5/1/12 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): Immediate	The suitability in annuity transactions regulation, which generally follows the NAIC model regulation with minor deviations, adopt amendments to sections on duties of insurers and producers, definitions, supervision systems, producer prohibited acts, FINRA requirements, producer training, and compliance.
Bulletin 11-28	X			Dated: 9/13/11	Bulletin answers questions regarding the adoption of the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation and new requirements for insurance producers selling annuity products effective November 1, 2011.
Bulletin 11-10	X			Dated: 5/13/11	This bulletin notifies insurers of amendments to the suitability in annuity transactions regulation which generally follows the NAIC model with minor deviations. The amendments are effective November 1, 2011.
Reg. 31.03.15			X	Effective: 4/4/2011	Defines what constitutes misleading use of a senior retiree credential or designation by advisors and insurance producers in connection with life insurance, health insurance, or annuities. Adopts a substantially similar version of the NAIC Senior Designations Model.
S. 774			X	Signed by Governor: 5/20/10	Sets forth standards to protect consumers from dishonest, deceptive, misleading and fraudulent trade practices in the use of senior-specific certifications and professional designations in the marketing, solicitation, negotiation, sale, and purchase of, and advice given in connection with, life insurance, health insurance and annuities. Prohibits a person from using a senior-specific certification or professional designation in a way that would mislead a purchaser of life insurance, health insurance, or an annuity about specified matters. Requires the insurance commissioner, by regulation or order, to specify what constitutes a misleading use of senior-specific certifications or professional designations.
H. 882			X	Effective: 7/1/2010	

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H. 571			X	Signed by Governor: 5/7/09 Effective: 5/7/09	As enacted, prohibits a person from using a senior or retiree credential or designation in a way that is misleading in connection with the offer, sale, or purchase of any security, or in advising another person as to the value, purchase, or sale of any security. Specifies the factors to be considered in determining whether a person is using a senior-specific certification or professional designation. (Same as HB571) [Note: "security" is defined to not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum, periodically for life, or some other specified period:"]
S. 684			X	Signed by Governor: 5/7/09 Effective: 5/7/09	(Same as H. 571)
Admin. Code §§ 31.15.04.01 to 31.15.04.07				Adopted 1980.	Variation of the NAIC Annuity Disclosure Model.
Reg. 31.09.12.01 +	X			Adopted 2007. Effective: 7/1/07.	Similar to the NAIC Suitability Model. ACLI submitted comments on 2/1/07. Sec. 6 of the adopted reg. has been amended slightly (from the proposed reg.) to reflect that compliance with the NASD Conduct Rules satisfies compliance with the regulation.
<b>MASSACHUSETTS</b>					
Proposed Reg. 211 CMR 96.01 +	X				The proposed amendments to the regulation on consumer protection in annuity transactions would make it comply with the updated NAIC Model regulation, including adding training requirements for insurance producer's selling annuities. They would also include expanding the section on duties of insurance producers and insurers, and adding definitions. Similar to the 2010 NAIC Suitability Model.
Opinion Letter					The Division of Insurance published an opinion letter dated August 5, 2009, on the "straight through processing" standards initiative being advocated by ACLI and the Insured Retirement Institute (formerly NAVA) that recognizes the ability to process the sale of annuities electronically in Massachusetts. August 6 State News Weekly
Reg. 211 CMR 96	X			Adopted 2006.	Similar to the 2006 NAIC Suitability Model.



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<b>MICHIGAN</b>					
MI Comp. Laws Ann. §500.4153	X			Law Effective: 6/1/13	Similar to the 2010 NAIC Suitability Model.
<b>MINNESOTA</b>					
MN Stat. Ann. §72A.203-72A.2036	X			Law Effective: 6/1/13	Similar to the 2010 NAIC Suitability Model.
H. 1853			X	Enacted 2009	Adopts the NAIC model on Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (Section 43).
Stat. § 72A.20				Enacted 1995.	Regulation of Trade Practices- Annuity Solicitation Standards.
Stat. § 60k.46				Enacted 2002.	Insurance Producers- Annuity Solicitation Standards.
<b>MISSISSIPPI</b>					
MS ADC 19-2:18.01	X			Rule Effective: 4/10/13	Similar to the 2010 NAIC Suitability Model.
<b>MISSOURI</b>					
Rule 20 CSR 700-1.140			X	Effective: 1/1/09	The new section, which is consistent with the NAIC model regulation, establishes provisions on the permissible use of senior-specific certifications and professional designations. Includes prohibited uses of such certifications and designations and accepted accrediting entities.
Rule 20 CSR 700-1.146				Effective: 7/30/08	Amends the standards of professional conduct for insurance producers selling variable annuities and variable life insurance. Also includes new sections on standards of producer conduct for fixed and indexed annuities.
Rule 20 CSR 700-1.147				Effective: 7/30/08	This rule amends provisions on supervision in the sale of variable annuities and variable life insurance to replace references to the National Association of Securities Dealers (NASD) with the Financial Industry Regulatory Authority (FINRA).
Rule 20 CSR 700-1.148				Effective: 12/30/08	
Rule 20 CSR 400-5.410		X		Adopted 2007. Effective: 1/30/07	Similar to the NAIC Disclosure Model.

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MO Ann. Stat. §376.671 20 MO Code Regs. 400-1.020 20 MO Code Regs. 700-1.146	X				Non model, suitability provisions.
<b>MONTANA</b>					
Admin. R. 6.6.801- 6.6.806		X		Adopted 1998 and 1999.	
MT Code Ann. §33-20-802	X			Signed by the governor on 5/8/07. Effective 10/1/07.	Similar to the 2010 NAIC Suitability Model.
<b>NEBRASKA</b>					
NE Rev. St. §44-8103	X			Law Effective: 7/19/12	Similar to the 2010 NAIC Suitability Model.
Bulletin CB-128	X			Dated: July 6, 2012	Bulletin responds to queries received by the Nebraska Department of Insurance regarding annuity training requirements for producers who hold a life insurance line of authority. Insurance producers who hold a life insurance line of authority and want to solicit the sale of annuity products are required to complete, within 6 months after July 19, 2012, a one-time, four-credit training course approved by the Department of Insurance.
<b>NEVADA</b>					
Reg. Chapter 686A			X	Effective: 7/1/11	Adopts new provisions regulating the use of senior-specific certifications and professional designations, including prohibiting a producer from using senior-specific certifications or professional designations when the producer has not received any specialized training in the servicing of seniors from a qualified organization (Similar to NAIC Model).
NV ST §688A.450	X	X		Adopted 2005. Re-proposed and adopted in 2006.	Similar to the 2006 NAIC Suitability Model. Also see Bulletin No. 06-004.
<b>NEW HAMPSHIRE</b>					
NH Code Admin. R. Ins. 305.02 NH Bulletin INS 14-036-AB	X			Effective: 1/1/2015	Similar to the 2010 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Admin. Code Ins. 301.06(1)					Commissioner Sevigny has published a Bulletin (07-47-AB) that outlines the Department's position on suitability standard to both life insurance and annuities. ACLI has commented to the Commissioner of Insurance on his recent suitability Bulletin 07-047-AB, expressing its deep concerns with the new compliance requirements for insurers set forth in the Bulletin.
Rule 311.01+			X	Effective: 3/1/09	The new rule on using senior specific certifications and professional designations is based on the NAIC model and establishes measures for using the designations in the solicitation, recommendation, sale or acquisition of life insurance and annuity products.
Admin. Code Ins. 306.02 to 306.9				Adopted 1983 and 2001.	Variation of the NAIC Annuity Disclosure Model. These sections have all expired as of 2009.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>NEW JERSEY</b>					
Bulletin 14-05		x		Effective: 06/30/14	<p>Bulletin provides insurers and insurance producers with an updated <a href="#">NAIC Buyer's Guide for Deferred Annuities</a>, use of which is required by June 30, 2014. Per the Bulletin, the DOBI is notifying all authorized/admitted insurers and all insurance producers/agents that transact annuity business in New Jersey, that the NAIC has adopted a new Buyer's Guide and the DOBI has posted the new Buyer's Guide on its website. Pursuant to N.J.A.C. 11:4-59.3(b), an insurer shall provide a consumer who applies for an annuity, a buyer's guide regarding the sale of annuities, as approved by the NAIC and shall utilize the Buyer's Guide to Fixed Deferred Annuities. Insurers and individuals subject to the notice requirement may begin to use the posted Buyer's Guide immediately, but must utilize it no later than June, 30, 2014.</p> <p>Bulletin Clarification: As previously reported, the New Jersey Department of Banking and Insurance (DOBI) issued Bulletin No. 14-05, Use of Annuity Buyer's Guide, on April 2, 2014. This bulletin notifies all authorized/admitted insurers and all insurance producers/agents that transact annuity business in New Jersey, that the NAIC has adopted a new buyer's guide and the DOBI has posted the new buyer's guide on its website. Per the bulletin, pursuant to N.J.A.C. 11:4-59.3(b), an insurer shall provide a consumer who applies for an annuity a buyer's guide regarding the sale of annuities, as approved by the NAIC and shall utilize the NAIC Buyer's Guide to Fixed Deferred Annuities. Insurers and individuals subject to the notice requirement may begin to use the posted buyer's guide immediately, but must utilize it no later than June, 30, 2014. The bulletin further provides that the buyer's guide shall be "modified" to reflect the 10 and 15 cancellation periods per New Jersey law 11:4-59.3. ACLI has confirmed with the DOBI that it is not the intent of the DOBI to require insurers to modify the NAIC Buyer's Guide free look language. Per the DOBI, New Jersey's free look laws are adequately described in the new NAIC Buyer's Guide and there is no need for insurers to make any changes.</p> <p>Update: As previously reported, the Department of Banking and Insurance (DOBI) issued Bulletin No. 14-05 notifying insurers that effective June 30, 2014, they must use the new NAIC Buyer's Guide to Fixed Deferred Annuities. ACLI became aware that the Buyer's Guide originally posted on the DOBI's website was incorrect. It is now corrected. ACLI has confirmed with the DOBI that companies may also continue to use NAIC version ANB-LA, Buyer's Guide for Deferred Annuities - Fixed and Variable (2013).</p>

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
NJ Admin. Code §11:4-59A.1	X			Reg. Effective: 2/4/13	Similar to the 2010 NAIC Suitability Model.
Bulletin 13-01	X			Dated: 2/6/13	This Bulletin clarifies that by delaying the operative date of certain provisions on producer training and the sale of annuities until August 4, 2013, producers newly licensed to sell annuities on or after February 4, 2013 may sell the types of annuities to which the rules apply, but must complete the required training course by August 4, 2013 in order to continue to sell those annuities after that date. The Bulletin also provides information on approved annuity training courses.
Rule 11:4-60.1+			X	Effective: 3/7/11	Establishes limitations on insurance producers, insurers and fraternal benefit society representatives regarding the use of certifications, professional designations, or forms of advertising expressing that the person or entity has special education, training or experience in advising or servicing senior citizens or retirees, in connection with the solicitation, negotiation of sale of life insurance.
S. 1745			X	Effective: 7/6/10	Adopts a substantially similar version of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations and applies its prohibitions to the offer, sale or purchase of a security.
Rev. Stat. § 17B:25-20				Enacted 1981 and 2005.	Limits maturity dates & surrender charges for annuities sold to seniors.
<b>NEW MEXICO</b>					
12 N.M. Admin. Code § 11.17.1+			X (NASAA)	Effective: 1/1/10	Establishes standards and requirements for use of senior-specific certifications and designations in sale of securities. (Based on NASAA Model)
13 N.M. Admin. Code §§ 9.12.1 to 9.12.13		X		Adopted 1997 and 2000.	

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>NEW YORK</b>					
A. 1787/S. 7254			X	Effective: 11/21/2014	Legislation (A. 1787/S. 7254) enacted in New York requires a person or business using a senior specific designation in advertising to disclose the basis or source for the designation. Policymakers passed the new law to give consumers additional information about the legitimacy of senior designations. If in writing, the disclosure regarding the designation must be in a size sufficient to be noticeable for an ordinary consumer to read and understand. If provided orally, the message regarding the senior designation must be communicated in such a way that the consumer can hear and comprehend the notice. The new law amends the general business section of the New York statutes and is applicable to all businesses. The law is not insurance specific and does not follow the NAIC Model Regulation on the Use of Senior Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.
11 NYCRR 224.1	X			Effective: 8/14/13	Similar to the 2010 NAIC Suitability Model.
A. 634				Introduced: 1/9/13	Would place restrictions on the sale of annuities to seniors and provide for suitability requirements and the establishment of a system to supervise recommendations. Would, among other provisions, require annual 3 hours training on suitability in annuity and life insurance transactions and would prohibit the false use of insurance designations.
Reg. 199			X	Effective: 2/20/13	New rule establish standards and requirements for the use of senior-specific certifications and designations in the sale of life insurance and annuities. Also, specifies prohibited uses of senior-specific certifications and professional designations. Follows the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.
Emergency Reg. 199			X	Effective: 2/1/13 Expires: 4/2/13	Emergency regulation establishes standards and requirements for the use of senior-specific certifications and designations in the sale of life insurance and annuities. Specifies prohibited uses of senior-specific certifications and professional designations. Emergency regulation expires April 2, 2013.
Emergency Reg. 187	X			Effective: 5/31/13 Expires: 7/29/13	Emergency regulation establishes requirements for insurers and producers to determine a consumers' suitability prior to recommending or selling an annuity. This emergency regulation is substantially similar to the NAIC Suitability in Annuity Transactions Model Regulation. Emergency regulation expires July 29, 2013.



Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Admin. Code tit. 11 §§ 40.0 to 40.6 (Reg. 139) (1990) §§ 53-1.1 to 53-1.6 (Reg. 74)				Adopted 1990, 1997 and 2003.	Variation of the NAIC Annuity Disclosure Model addressing group annuity contracts and funding agreements.
<b>NORTH CAROLINA</b>					
Rule 11 NCAC 12.0461			X	Effective: 2/1/10	Incorporates by reference the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations, which establishes standards and requirements for the use of senior-specific certifications and professional designations in the sale of life insurance and annuities.
Admin. Code tit. 11 ch. 12 § .0420				Adopted 1976 and 1992.	Requires submission of suitability form.
Gen. Statutes §58-60+		X		Enacted 2005. (HB 655)	Omnibus bill including NAIC Annuity Disclosure model language.
NC Gen. Stat. §58-60-155	X			Signed by the Governor 7/28/07. Effective 1/1/08.	Similar to the 2006 NAIC Suitability Model.
<b>NORTH DAKOTA</b>					
ND Cent. Code §26.1-34.2-01.1	X			Law Effective: 8/1/11	Similar to the 2010 NAIC Suitability Model.
S. 2155	X			Signed by the Governor 4/12/07. Effective: 8/1/07.	Similar to the NAIC Suitability Model. There is a deviation in the Mitigation of Responsibility section. It appears to be a drafting error and is expected be corrected before the hearing. Passed Senate unanimously with an amendment correcting the deviation in the section mentioned above.
Admin. Code § 45-02-02-14				Adopted 1984 and 2001.	Rules cover recommendations to consumers over 65.
<b>OHIO</b>					
Rescission Of Rule 3901-6-14		X		Effective: 01/01/15	The amendments rescind the annuity disclosure rule because it does not include reference to the updated version of the NAIC Annuity Disclosure Buyer's Guide.
Rule 3901-6-14		X		Effective: 01/01/15	The amendments to the annuity disclosure rule include references to the updated version of the NAIC Annuity Disclosure Buyer's Guide.
Rule 3901-6-13	X			Reg. Effective: 7/1/11	Similar to the 2010 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Bulletin 2011-07	X			Dated: 5/10/11	The bulletin provides a reminder that as of July 1, 2011, the suitability of annuity sales rule imposes a new one-time annuity-specific continuing education requirement on insurance agents who engage in the sale, solicitation or negotiation of annuity products. This one-time requirement is in addition to the company provided product specific training.
Rule 3901-5-11			X	Effective: 7/1/09	Creates procedures and prerequisites in the application of senior-specific certifications and designations by insurance agents in the counseling, sale, solicitation or negotiation of life or health insurance policies or annuity products.
Reg. 3901-6-14		X		Adopted: 2007. Effective: 3/1/07.	Similar to the NAIC Annuity Disclosure Model.
<b>OKLAHOMA</b>					
Rule 365:25-19-5		X		Effective: 09/15/14.	Amends annuity disclosure provisions that require insurers to use the buyer's guide found in Appendix S by revoking Appendix S and instead requiring insurers to use the most current version of the NAIC Buyer's Guide to Annuities.
Bulletin 2013-02		X		Dated: 10/24/13	This bulletin informs insurers that the Insurance Department in 2014 will amend its rule on Standards for the Disclosure Document and Buyer's Guide to include language in the updated 2013 NAIC Buyer's Guide to Annuities. Until that time, the Insurance Department will allow insurers and producers to use either the version currently being used or the recently updated NAIC Buyer's Guide.
Annuity Training Notice	X			Dated: 1/11/12	Notice states that the 4 hour annuity training requirement for producers selling annuities is now applicable to resident and nonresident producers. The Insurance Department will allow a 90 day grace period for nonresident producers to comply. Those producers who have satisfied an annuity training requirement in another state with substantially similar provisions as the Oklahoma rule will be deemed to satisfy the Oklahoma requirement, according to the notice.
OK Admin. Code §365:25-17-2	X			Effective: 7/14/10	Similar to the 2006 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Rule 365:25+			X	Effective: 7/14/09	The rule amends provisions on standards for determining if an insurance company is in a hazardous financial condition, requirements for prepaid funeral benefits, conversion from trust to insurance funded contracts, commissioner's authority, and viatical settlement licensing and reporting requirements. Adds a new regulation on the use of senior-specific certifications and professional designations in the sale of life insurance and annuities and new sections on viatical settlement standards for evaluation of reasonable payments for terminally ill insureds, advertising filing requirements, prohibited practices, insurance company practices, and the transition period for existing licenses. Also revokes Subchapter 13 on the regulation of life settlements and adds new appendices for a required brochure and forms for viatical settlements.
OK Rule 365:25-19-5		X		Effective: 09/15/14.	Amends annuity disclosure provisions that require insurers to use the buyer's guide found in Appendix S by revoking Appendix S and instead requiring insurers to use the most current version of the NAIC Buyer's Guide to Annuities.
Rule 365:25-19-1		X		Adopted 2006.	Similar to the NAIC Annuity Disclosure Model.
<b>OREGON</b>					
Rule 836-080-0170+	X			Reg. Effective: 7/1/11	Similar to the 2010 NAIC Suitability Model.
Rule 836-080-0160			X	Effective: 11/1/09	Establishes criteria to safeguard consumers from deceptive and dishonest marketing practices. It provides protection relating to the use of distinctive descriptions and certifications in the solicitation, transaction or acquisition of, or counsel made, concerning an insurance product or in offering advice as to the value of or the suitability of purchasing insurance. The adopted rule goes beyond the NAIC model and applies to all designations, not just those used in the senior market.
OAR 836-080-0090				Adopted 2004.	General suitability standards not based on NAIC Senior Protection Model.
OAR 836-051-0900		X		Effective: 8/15/08	The Insurance Division has started a rulemaking process to adopt the Annuity Disclosure Model by rule. A rulemaking advisory committee meeting will be held 5/5.
<b>PENNSYLVANIA</b>					
40 PA Cons. Stat. Ann. §627-2	X				Similar to the 2006 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Admin. Code tit. 31 §§ 85.38 to 85.39				Adopted 1978.	Variation of the NAIC Annuity Disclosure Model addressing variable annuity and variable accumulation annuity contracts.
<b>RHODE ISLAND</b>					
Reg. 41		X		Effective 02/18/14.	Brings rule into compliance with the NAIC model act. Includes requiring a new Buyer's Guide, adding a new section describing the criteria for annuity illustrations and augmenting the essentials necessary in the disclosure document.
ACLI Comments					
Reg. Securities 501-1			X	Effective: 1/13/11	Regulation establishes standards and requirements for the use of senior specific certifications and designations in the offer, sale, or purchase of securities. The regulation is substantially similar to the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designation with the exception of certain stylistic drafting changes.
RI ADC 11-5-12:3	X			Reg. Effective: 1/20/11	Similar to the 2010 NAIC Suitability Model.
Bulletin 2011-02	X			Dated: 4/22/11 Effective: 6/1/11	Details producer training requirements for annuity suitability prior to the sale, solicitation, or negotiation of policies or contracts, effective June 1, 2011. Includes details on course approval, hours of training required, evidence of compliance with training requirements, and record retention.
Reg. 41		X		Effective: 9/30/09	The new regulation stipulates the minimum information that is required to be disclosed and the manner for disclosing it relating to the sale of annuity contracts. It makes certain that consumers comprehend specific essential attributes of annuity contracts and is based on the NAIC model.
Reg. 112			X	Effective: 5/26/09	Based on the NAIC model, the new regulation on senior specifications was adopted to offer continuity with other states. It establishes criteria to protect consumers from deceptive marketing practices concerning the use of senior-specific certifications and professional designations in the purchase, solicitation, sale or advice made in connection with life insurance or annuity products.
<b>SOUTH CAROLINA</b>					
Reg. 69-29	X			Reg. Effective: 9/25/11	Similar to the 2010 NAIC Suitability Model.
Ins. Reg. 69-39				Adopted 1986.	Older version of the NAIC Annuity Disclosure Model.
Reg. 69-40.1			X	Effective: 5/28/10	Based on the NAIC model regulation, establishes standards and requirements for the use of senior-specific certifications and

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>SOUTH DAKOTA</b>					
SD Codified Laws §58-33A-13 to 58-33A-27	X			Signed by Governor: 2/23/12	Similar to the 2010 NAIC Suitability Model.
Rule 20:08:03			X* (NASAA)	Effective: 12/9/10	Adds new rule to prohibit the use of senior specific designations or certifications to imply special training or knowledge when advising senior citizens or retirees about investing, purchasing or selling securities (adopts NASAA Model). Also replaces the name "National Association of Securities Dealers" with "Financial Industry Regulatory Authority, Inc."
<b>TENNESSEE</b>					
Proposed Regulation 0780-01-86-.01	X				The Insurance Department published Proposed Regulation 0780-01-86-.01 on Annuity Suitability. As published, the regulation deviates (PDF) from the model for insurance producer training as it does not contain a six month grace period. ACLI submitted a comment letter (PDF) to the department asking that the model regulation language be used in Tennessee. A hearing on the regulation is scheduled for May 5 at 9:00 a.m. <b>*On May 5, the Department of Commerce and Insurance held a hearing on proposed regulation, 0780-01-86, Suitability in Annuity Transactions. ACLI testified in support of the regulation, but requested a lead time for compliance of 6 months from the effective date. The record has been left open for 2 weeks to allow for additional comments.</b>
Bulletin	X			Date: 5/22/13	On May 22, 2013, a Bulletin was issued addressing questions arising from Reg. sec. 0780-1-86 suitability in annuity transactions. The department's insurance and securities divisions jointly authored the bulletin to provide guidance to insurance producers, investment advisers, investment adviser representatives and broker-dealer agents about the permissible and prohibited activities of Insurance-Only and Securities-Only persons. The bulletin follows Iowa Insurance Bulletin 11-4, a bulletin that had the approval of industry.
TN Ad Reg 0780-01-86+	X			Effective: 7/6/08	Similar to the 2006 NAIC Suitability Model.
<b>TEXAS</b>					
Annuity Training					The Department of Insurance (TDI) has taken action to update and extend reciprocity on agents' annuity training to all states that have adopted the NAIC Suitability in Annuity Transactions Model

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
TX Ins. Code Ann. §1115.003	X			Signed by the Governor: 6/17/11	Regulation (NAIC model). After Texas enacted the NAIC model through legislation in 2011, TDI only acknowledged about 18 states as being reciprocal and lagged in updating its website to add states that subsequently adopted the NAIC model. Outreach by ACLI and TALHI over the past year prompted TDI to revise its web page on July 11, 2014 to remove the listing of states and instead provide that a <i>Texas resident or non-resident agent may meet the Texas annuity initial training requirement by having completed an initial training course that has been approved in Texas or in a state that is also compliant with the National Association of Insurance Commissioners (NAIC) annuity training model requirements.</i>
Rule 28 TAC 3.9701+		X		Effective: 3/1/11	Similar to the 2010 NAIC Suitability Model.  Adopts annuity disclosure rules that require insurers provide specific disclosures to both annuity applicants and annuity contract owners. The annuity disclosure rule deviates from the NAIC model regulation and follows the substance of H. 1293, which passed during the 2009 legislative session but was vetoed by Governor Perry because the bill contained a private right of action. The rules are applicable to annuity transactions that occur on or after the date that is six months after the effective date of the rule. [Ed. Note: Please see the 2/15/11 State News Flash for additional information.]
H. 1294			X	Signed by the governor 6/19/09	As enacted, relates to the use of senior-specific certifications and professional designations in the sale of life insurance and annuities. Follows the NAIC Senior Designations and Professional Certifications Model Regulation. Also includes agent education requirements in the sale of annuity products and applicable only to resident agents. Provides an April 1, 2010 compliance date for the agent continuing education requirements. Effective date is September 1, and applies only to the solicitation of, sale of, or advice made in connection with, a life insurance or annuity product by an insurance agent on or after January 1, 2010.
H. 4492	X			Signed by Gov: 6/19/09 Effective: 9/1/09. Chapter No. 1093	As enacted, amends the suitability law to address annuities registered under the Securities Act of 1933 and update reference from NASD to FINRA.



Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>UTAH</b>					
Rule R590-229-4+		X		Effective: 3/11/14	Amendments to the annuity disclosure rule update the incorporated NAIC Annuity Buyer's Guide to the 2013 versions. The revised Buyer's Guides include annuities in general, fixed annuities and variable annuities as well as deferred annuity, deferred annuity fixed and deferred annuity variable buyer's guides.  The Insurance Department has amended Regulation R590-229-9 to extend the enforcement date from 45 days after the regulation's effective date to 65 days after the regulation's effective date. The effective date of the regulation is May 27, 2014.
Rule R590-230-1+	X			Rule Effective: 3/26/12	Similar to the 2010 NAIC Suitability Model.
R590-252			X	Effective: 2/25/09	The new rule institutes criteria for using senior-specific certifications and professional designations by insurance producers and consultants, broker-dealers and investment advisors in the sale of life insurance, annuities, and accident and health products.
R590-229-1		X		Adopted 2004.	
<b>VERMONT</b>					
Reg. SI-11-03			X	Effective: 9/1/11	Adopted rule prohibits the use of senior specific-certifications and designations to imply special training or knowledge in the offer, sale, or purchase of securities or insurance, or in providing investment advice regarding securities or insurance. Adopts a similar version of the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations.
H. 222			X*	Signed by Governor 6/1/09. This act shall take effect on July 1, 2009, except that Secs. 1, 2, and 5 of this act shall take effect January 1, 2010.	Creates new law authorizing the Commissioner of Business, Insurance, Securities and Health Care Administration (BISHCA) to extensively regulate life settlements, while specifically prohibiting stranger-originated life insurance (STOLI) transactions. Authorizes BISHCA to adopt rules that would govern credentials, certifications, and designations of those holding themselves out as possessing special levels of expertise regarding senior investments.
VT Stat. Ann. Tit. 8 §4724(16)	X				Non model, suitability provision.
<b>VIRGINIA</b>					
Reg 14 VAC 5-43-10+			X	Effective: 5/15/09	The new regulation, which closely follows the NAIC model

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
14 VAC 5-30-10+				Adopted: 2006. Effective: 4/1/07	Life Insurance and Annuity Replacements regulation, establishes standards and requirements for the use of senior-specific certifications and designations by insurance agents in the marketing, sale, or purchase of a life or accident and health insurance policy, or annuity products. Applicability includes the marketing, sale, or purchase of disability income insurance policies, long-term care insurance policies, long-term care partnership policies, and fixed and variable annuities.
14 VA Admin. Code §5-45-10	X			Adopted: 2006. Effective: 4/1/07.	Similar to the 2006 NAIC Suitability Model.
<b>WASHINGTON</b>					
Rule 284-17-265 and Rule 284-23-390	X			Rule Effective: 3/29/12	Similar to the 2010 NAIC Suitability Model.
ACLI Comments					
Rule 284-17-605			X	Effective: 3/16/12	New rule establishes standards and requirements for the use of senior-specific certifications and designations in the sale of life insurance and annuities, similar to the NAIC Model.
ACLI Comments					
Admin. Code R. §§ 284-23-300 to 284-23-380				Adopted 1980.	Older version of the NAIC Annuity Disclosure Model.
S. 5671	X			Signed by governor 3/30/09. Chapter 18. Effective 7/26/09	Requires that annuities sold in the state be appropriate for the age and financial situation of the owner. Sets forth various requirements for insurers and producers concerning the sale of annuities. Requires the Commissioner to adopt by rule, annuity suitability standards, upon reviewing standards previously established by the NAIC and other states. Includes the Mitigation of Responsibility section of the NAIC model and updates the FINRA safe harbor language to refer to "registered" annuities. Requires the Commissioner to notify the Legislature if a change is made in the types of annuities subject to registration under the Securities Act of 1933. (Same as H. 1563)
<b>WEST VIRGINIA</b>					
S. 187		X		Effective: 02/28/2015	Senate Bill 187 was signed into law on March 5, 2015. The bill authorizes the adoption of rulemaking put forward by the office of the insurance commissioner in 2014, which provides for the
S. 189					

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
H. 2334 <b>ACLI Comment Letter</b>					<p>adoption of the NAIC 2012 Individual Annuity Reserve Table (2012 IAR table) and the revised NAIC Annuity Disclosure Model Regulation. Since these rules were placed in a bundled bill which includes other agency rules, the bill contains an "effective immediately upon passage" mandate. ACLI contacted the office of the insurance commissioner's general counsel and was advised that in these situations the offices have entertained a phase-in period for compliance which is sometimes provided by informational letter or further directives at a later date. The department indicated that they are open to suggestions and comments. ACLI will be submitting comments this week requesting a delayed effective date for the annuity disclosure rule.</p> <p>*As previously reported, S. 187 was signed into law on March 5, 2015. The bill authorizes the adoption of rulemaking put forward by the Offices of the Insurance Commissioner (OIC) in 2014, which provides for the adoption of the NAIC 2012 Individual Annuity Reserve Table (2012 IAR table) and the revised NAIC Annuity Disclosure Model Regulation. Since these rules were placed in a bundled bill which includes other agency rules, the bill contains an "effective immediately upon passage" mandate. However, the actual effective date for each of the rules was ultimately dependent on the OIC final filing of the rules with the Secretary of State. Shortly after the bill was enacted, ACLI submitted a comment letter requesting a delayed effective date for the annuity disclosure rule in order to provide member companies with adequate lead time to develop and implement the procedures and systems changes necessary to comply with the rule.</p> <p>On April 24, both rules were final filed with the Secretary of State with July 23, 2015 effective dates.</p>
Proposed Rule 114-11E-1 + Comment Letter		X		Comment Date: 07/24/14	<p>The proposed amendments to the annuity disclosure rule, based on the 2011-amended NAIC Annuity Disclosure Model Regulation, would include adding a new section on standards for annuity illustrations, adding to the "non applicability" list, adding new definitions and renumbering the section on report to contract owners. They also would include removing the appendices on Equity-Indexed Annuities and Buyer's Guide, and replacing them with an Annuity Illustration Example.</p>
Rule 114-11B	X			Reg. Effective: 7/1/11	<p>Similar to the 2010 NAIC Suitability Model.</p>
Rule 114-89			X	Effective: 7/1/10	<p>Establishes standards and requirements for the use of senior-specific certifications and professional designations in the sale of life</p>

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Rule 114-11E		X		Effective: 7/16/10	insurance and annuities. (NAIC Senior Designations Model)
S.407		X	X	Signed by Governor: 4/2/10 Effective: 3/13/10	Establishes requirements for the disclosure of information in relation to the sale of annuity contracts. Includes requirements for the content of the disclosure document and the Buyer's Guide. (NAIC Annuity Disclosure Model) This bill adopts various regulations, including Annuity Disclosure (Prop. Rule 114-11E) and Use of Senior Designation (Prop. Rule 114-89). While the legislation itself is effective, ACLI is working with the Insurance Department on effective dates for the Rules.
Code of State Rules § 114-11-6(g)				Adopted 1974.	General suitability standard not based on the NAIC Suitability Model.
<b>WISCONSIN</b>					
Proposed Rule ADC Ins 2.14+		X			The Office of the Commissioner of Insurance published Proposed Rule ADC Ins 2.14+ that would allow insurers and agents to use the most current version of the applicable NAIC Buyer's Guide for Deferred Annuities, thereby discontinuing use of the outdated Wisconsin Buyer's Guide to Annuities. The hearing for the proposed regulation is scheduled for January 23 and comments are due by February 6.
Annuities Buyers Guide		X			The Office of the Commissioner of Insurance (OCI) intends to update its Buyers Guide for Annuities by implementing the NAIC version that was revised in 2013. Wisconsin currently has its own Buyers Guide and such a proposal (PDF) would make this guide obsolete. The OCI is requesting data from insurers regarding financial impact to insurers as the NAIC requires a 35 cent fee for each guide distributed by a company to a Wisconsin resident. ACLI member companies may provide such data to the OCI directly or to ACLI.
WI Stat. Ann. §628.347	X			Signed by Governor: 5/13/10	Similar to the 2010 NAIC Suitability Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Rule Ins. 6.90			X	Effective: 1/1/10	The new rule creates criteria to shield consumers from deceitful practices with respect to the use of senior-specific certifications and professional designations in the advertising, solicitation, sale or purchase of life insurance, annuity products or health insurance. It follows closely the NAIC model with two discrepancies. The new rule adds advertising to the list of practices and conduct, and health insurance to the list of products to which the rule applies.
S. 294	X			Signed by governor 3/26/08; Effective 3/28/08 except for following sections: Insurance Form Filing is effective 7/1/08 and Suitability of Annuities is effective 10/1/08.	Enacts the NAIC Interstate Insurance Product Regulation Compact with slight deviations. Amends the suitability of annuity sales statutes to make them apply to consumers of all ages, not just to a person 65 or older. This makes the statute consistent with the NAIC Suitability in Annuity Transactions Model Regulation. Provides that, with a number of specified exceptions, a form first used on or after the effective date of the provision that has not already been filed by that date may be used without approval by the commissioner. The specified exceptions, which must still be filed and approved before use, include, among others, forms for long-term care insurance. The Committee met on 4/22 and heard presentations from Jim Mumford of the Iowa Department, IMSA, and FINRA regarding their activities on suitability. The Committee has recently been given the task of developing baseline supervision standards for the NAIC Suitability of Annuity Sales Working Group.
Stat. § 628.347	X			Enacted 2004.	Applies to consumers over 65. (SB 320)
Admin. Code § INS. 2.15				Adopted 1982 & 1989.	Variation of NAIC Annuity Disclosure Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>WYOMING</b>					
Rule ADC Ins Gen Ch 64 \$1+	X				Similar to the 2010 NAIC Suitability Model.
Wyoming: Annuity Suitability: Update	X				The Department of Insurance has informally clarified that the "FINRA safe-harbor" to sales of fixed annuities sold in compliance with FINRA rules applies to fixed annuities. At the request of several ACLI member companies, ACLI staff made outreach to the department to determine whether the deviation from the NAIC Suitability in Annuity Transactions Model Regulation in its recently adopted Chapter 64 regulation was intentional. As adopted, the new regulation extends the "FINRA safe-harbor" to sales of variable products only. Department senior staff responded that "[T]he intention is for all products (fixed or variable) sold pursuant to FINRA suitability rules will satisfy Wyoming law." The regulation will be reopened to include fixed annuities in §6(k). In light of the upcoming September effective date of the rules, ACLI requested and anticipates a department memorandum clarifying its intent of applicability to fixed annuities in advance of proposed changes to the regulation.
Prop. Rule ADC Ins Gen Ch 64 §1+	X			Comments: 8/11/13 Hearing: 10/29/13	The Insurance Department has posted proposed rules creating a new Chapter 64 Regulation Governing Suitability in Life Insurance and Annuity Transactions. The department's Statement of Principal Reasons (PDF) for the new Chapter 64 regulation cites that the department has experienced "a growing number of requests for assistance following investment into products where the consumer did not fully understand." The proposed rules attempt to somewhat follow the NAIC Suitability in Annuity Transactions Model Regulation (NAIC Model), with the glaring addition of inclusion of life insurance throughout the proposal. There is also noted new language in the comparison of the proposal to the NAIC Model.
ACLI Comments					ACLI received confirmation from insurance department staff that they are in the process of removing "life insurance" from the proposed Chapter 64 Regulation. It is our understanding that the department will either send out a notice of the rule change, or they may withdraw the pending proposal and submit a new proposal and allow for public comment. If the department chooses to amend and adopt the current proposed regulation, it will become effective six months after filing with the Wyoming Secretary of State.
ACLI State News Flash					
Rule 62			X	Effective: 4/23/10	The new rule, which deviates from the NAIC model regulation,



Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Ins. Reg. Ch. 27 § 11				Adopted 1968 & 1997.	establishes standards and requirements for the use of senior-specific certifications and designations in the sale of annuities, accident and health insurance, and life insurance. Specifies prohibited uses of such certifications and designations.  Variable contract regulation on suitability of sales.

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## State Laws Governing Suitability in Variable Life Insurance Sales

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### I. State Laws Governing VLI Suitability- Historical SEC & FINRA Parallels

### II. Suitability Requirements in the NAIC Model Variable Life Insurance Regulation

- A. Scope and Impact of Suitability Provisions in the NAIC Model Variable Life Insurance Regulation
  - a. Thirty-one jurisdictions have adopted the NAIC Model Variable Life Insurance Regulation, and an additional eleven have adopted related provisions.<sup>1</sup> Twenty-nine have specific provisions concerning suitability, which are set forth in a chart at the conclusion of this outline segment.
  2. Suitability standards are explicit and unequivocal in NAIC Model Variable Life Insurance Regulation, as explained below.
- B. Section 3 of the NAIC Model Variable Life Insurance Regulation establishes qualifications of insurers to issue variable life insurance, and Paragraph (C) sets forth detailed Standards of Suitability.
- C. Section 3(C) states that:
  1. Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a *written statement* specifying the *standards of suitability* to be used by the insurer. See, NAIC Model Regulation Service (January 1996) at 270-731 [emphasis added].
  2. The standards of suitability shall specify that no recommendation shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of the policy is *not unsuitable* for the applicant on the basis of information furnished *after reasonable inquiry* of the applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or the agent making the recommendation. *Id.* [emphasis added].
- D. The NAIC commentary on Section 3(C) provides additional clarification
  1. This section imposes a duty on both the insurer and its agents to make a *good faith, reasonable inquiry as to the facts and circumstances concerning a prospect's insurance and financial needs* and to make no recommendation that a prospect purchase variable life insurance when such a purchase is not reasonably consistent with the information that is known or reasonably should be known to the insurer or agent. See, NAIC Model Regulation Service

<sup>1</sup>See, NAIC Model Regulation Service (January 1996) at 270-771.

(January 1996) at 270-731 [emphasis added].

2. According to the commentary, some of the factors which would be considered are:
    - a. age,
    - b. earnings,
    - c. marital status,
    - d. number and age of dependents,
    - e. the value of savings and other assets,
    - f. and current life insurance program.
  3. The commentary explains that the substantive standard in Section 3(C) was derived from the federal securities laws. *Id.*
  4. The commentary emphasizes that the duty to make a good faith reasonable inquiry must be stressed since an insurer or agent cannot continually seek to avoid the obligations imposed by this section by claiming that a prospect refused to divulge information sufficient to make a professional evaluation of the suitability of variable life insurance to particular circumstances. *Id.*
- E. When the Model Variable Life Insurance Regulation was substantially amended in 1983 to accommodate flexible premium variable life insurance, this suitability provision was revised and updated to reflect state and federal regulatory changes that had evolved since the original Model Variable Life Insurance Regulation that governed only scheduled premium variable life insurance. The commentary explains that:
1. The 1983 amendments made changes in this section to achieve a more practical application of the suitability concept to sales of variable life insurance.
  2. While the concept originally set forth in this section was substantially similar to that utilized in the federal securities laws, the application of the concept was exaggerated as part of the effort to avoid SEC regulation of variable life insurance.
    - a. For example, prior to the 1983 amendments, the section required that the insurer adopt the standards of suitability by *formal action of its board of directors.*
      - (1) This requirement of board adoption was found to be unprecedented in NAIC model insurance statutes and unnecessary to the application of the suitability concept to sales of variable life insurance.
    - b. Similarly, the standards of suitability were “applicable to and binding on the insurer’s officers, directors, employees, affiliates and agents with respect to the suitability of variable life insurance for the applicant.”
      - (1) The potential for mischief of this broad requirement was considerable, raising, for example, the possibility of liability for violations of the suitability standards being imposed on individual officers, directors, employees or agents who never even knew of the transaction

involved.

- (2) These two aspects of the original Model Variable Life Insurance Regulation were deleted in the 1983 amendments. See, NAIC Model Regulation Service (January 1996) at 270-32.

F. Other NAIC interpretative guideposts on Section 3(C) suitability appear in a NAIC staff report which the NAIC adopted in 1974, that emphasized *three basic areas of ideal suitability* concerning VLI:

1. needs *perceived* by the insured;
2. needs *perceived* by the agent; and
3. *persistence*. See, 1974 Proceedings of the NAIC II at 540 [emphasis added].

G. The NAIC staff report contains further interpretive guidance.

1. The NAIC staff report was adopted as an interpretive guide to Section 3(C) in 1974 and offers the following language “as an informal consensus” on the meaning of suitability in the model variable life insurance regulation.

a. Definition—“Suitability” means the likelihood that the purchase of variable life insurance is reasonably consistent with:

- (1) The *expressed insurance objectives and needs* as perceived by the prospective insured;
- (2) The *reasonable objectives and needs* of the prospective insured as determined objectively by a professional agent after a diligent reasonable inquiry into relevant financial, family and other background information concerning the prospective insured; and
- (3) The *potential that the prospective insured will persist* with the policy for such a period of time that the insurer’s acquisition costs are amortized over a reasonable period of time. See, 1974 Proceedings of the NAIC II at 547 [emphasis added].

b. General Rules of Interpretation accompany the staff report that became the interpretive guide adopted by the NAIC, and explain:

- (1) When variable life insurance meets characteristics (1) and (3) or (2) and (3), it is probably still “suitable” in most instances.
- (2) Variable life insurance is clearly “unsuitable” when it meets none of the three characteristics for a given prospect.
- (3) Variable life insurance is probably “unsuitable” in the absence of extraordinary factors when it does not meet characteristic (3).
- (4) Other situations must be judged on their individual facts.

H. Even further clarifications to these VI standards of suitability were added in 1983. The commentary explains that:

1. In adopting the 1983 amendments, the NAIC recognized that the proliferation of variable life insurance product designs anticipated as a result of those amendments might make suitability, and particularly factors (1) and (2), even more important. See, NAIC Model Regulation Service (January 1996) at 270-

33 [emphasis added].

2. On the other hand, it was understood that the possibility of more variable life insurance products designed to compete with investment oriented products of other financial institutions will make factor (3) less significant because policyholders will be more likely to move among competing financial institutions will make factor (3) less significant because policyholders will be more likely to move among competing financial institution products for reasons such as rate of return, tax considerations and economic conditions. *As a result, persistency will be less and less relevant as a measure of suitability.* *Id.*
3. Section 3(C) requires the insurer to *formally adopt* its suitability standards.
  - a. Earlier drafts of Section 3(C) specifically required that the insurer establish and file with the commissioner guidelines or *profiles of applicants and situations* in which variable life insurance would not generally be suitable.
  - b. This specific requirement was deleted from Section 3(C).
- I. Other aspects of interest concerning VLI suitability from the NAIC Model Variable Life Insurance Regulation
  1. Private rights of action. The commentary notes that:
    - a. As to the potential legal implications of adopting standards of suitability, it is not unlikely in those jurisdictions where the doctrine of implied rights of action is accepted, that the theory would give rise to an enforceable obligation to the insured<sup>2</sup>. See, NAIC Model Regulation Service (January 1996) at 270-33 [emphasis added].
    - b. Furthermore, it is probable that the commissioner would have the authority (either formal or informal) to reverse an unsuitable sale upon the request of the policyholder. This would be in addition to the full range of sanctions available to him. *Id.*
  2. Group Contracts
    - a. The commentary states that the requirements of Section 3(C) would not be applicable with respect to each individual employee involved in a non-contributory pension plan situation. See, NAIC Model Regulation Service (January 1996) at 270-33.
  3. Lapse Rates not Germane
    - a. Prior to the 1983 amendments, the section included provisions pursuant to which lapse rates were to be utilized as indicators of suitability.
      - (1) These provisions were based upon the realization that suitability is a difficult area to police and the hope that lapse rates, by indicating persistency, would be an accurate yardstick for suitability.

<sup>2</sup> *Anderson v. Knox*, 297 F.2d 702 (9<sup>th</sup> Cir.), cert. Denied, 370 U.S. 915 (1961), the U.S. Court of Appeals for the Ninth Circuit held that an insurance agent who had induced a client to purchase excessive amounts of bank financed insurance was liable for damages in common-law fraud because the policies were not suitable to the plaintiff's needs.

- (2) The 1983 amendments eliminated references to lapse rates as measures of suitability.
- (a) The commentary explains that “[w]ith regard to conventional insurance policies, lapse rates, even those reflecting experience over a very long period of time, are suspect as an indicator of whether or not sales of insurance were suitable when made. Lapse rates are even less relevant to the suitability of sales of variable life insurance.” See, NAIC Model Regulation Service (January 1996) at 270-33.
  - (b) Lapse rates are affected by a variety of factors, the most significant of which ordinarily is changes in the policyholder’s perception of the attractiveness of the policy due to changes in the general economy and in the economic circumstances of the policyholder. *Id.*
  - (c) In the case of variable life insurance, an additional important factor is the performance of the separate account relative to other financial alternatives. Because of the significance of these factors, the use of lapse rates as a measure of suitability was found to be inappropriate. *Id.*

J. Suitability Information Required on Applications

- 1. Section 8(C) the NAIC Model Variable Life Insurance Regulation requires that variable life insurance applications *contain questions designed to elicit suitability information from applicants.* See, NAIC Model Regulation Service (2010) at 270-18.
  - a. This requirement dovetails with the suitability requirements in Section 3(C) discussed above.
  - b. The commentary to Section 3(C) cross references the required application information in Section 8(C). See, NAIC Model Regulation Service (2010) at 270-64.

**STATES WITH SUITABILITY PROVISIONS IN  
VARIABLE LIFE INSURANCE LAWS AND REGULATIONS**

<b>State</b>	<b>Suitability Standard</b>	<b>Suitability Information in Application</b>
Arizona	Ariz. Rev. Stat. § 20-2602(C)	Ariz. Rev. Stat. § 20-2608
Arkansas	Ark. Code Ann. § 33-Article III	Ark. Code Ann. § 33- Article VIII.
California	Cal. Code Regs. tit. 10, § 2534.2(c)	
Colorado	Colo. Code Regs. § 4-1-3(V)	Colo. Code Regs. § 4-1-3(VI)
Connecticut	Conn. Agencies Reg. § 38a-433-3(c)	Conn. Agencies Reg. § 38a-433-8
Delaware.	Admin. Code § 44(3)	Del. Admin. Code § 44(8)

D.C.	D.C. Mun. Regs. Tit. 26, § 2704.1	D.C. Mun. Regs. Tit. 26, § 2730.1
Georgia	Ga. Comp. R. & Regs. R. 120-2-32-.03	Ga. Comp. R. & Regs. R. 120-2-32-.09
Indiana	Ind. Admin. Code tit. 760, r.1-33-3	Ind. Admin. Code tit. 760, r.1-33-8
Kentucky	806 Ky. Admin. Regs. 15:030	
Louisiana	La. Admin. Code tit. 35, § 8303(3)	
Maine	Code Me. R. § 02-031 Chapter 300 Article V § 3 Authority of Insurer to Issue Variable Life Insurance	Code Me. R. § 02-031 Chapter 310 Article V § 3 Authority of Insurer to Issue Variable Annuity Contracts
Maryland	Md. Regs. Code tit. 31, § 09.12.01.02(D)	
Massachusetts	Mass. Regs. Code tit. 211, § 95.02 (3).	
Michigan	Mich. Admin. Code r. 500.844 Rule 4	Mich. Admin. Code r. 500.864 Rule 24
Mississippi	Miss. Reg. 84-101(3)(c)	
Missouri	Mo. Code Regs. Ann. Tit. 20, §400- 1.030(2)(C)	Mo. Code Regs. Ann. Tit. 20, §400-1.030(7)(C)
Nebraska	Neb. Admin. Code 210.15.003.03	Neb. Admin. Code 210.15.008.03
New Mexico	N.M. Admin. Code tit. 13, § 9.8.10	N.M. Admin. Code tit. 13, § 9.8.35
North Carolina	N.C. Admin. Code tit. 11, r. 12 .0435(3)	N.C. Admin. Code tit. 11, r. 12 .0440
North Dakota	N.D. Admin. Code § 45-04-02-03(3)	N.D. Admin. Code § 45-04- 02-07
Ohio	Ohio Admin. Code § 3901-06-08(D)	Ohio Admin. Code § 3901- 06-08(I)
Pennsylvania	31 Pa. Code § 82.14.	31 Pa. Code § 82.62.
South Carolina	25A S.C. Code Ann. Regs. 69-12, Article III	25A S.C. Code Ann. Regs. 69-12, Article VIII
Texas	28 Tex. Admin. Code § 3.803(3)	28 Tex. Admin. Code § 3.808
Vermont	Vt. Code R. I-88-3(3)	Vt. Code R. I-88-3(8)
Virginia	14 Va. Admin. Code § 5-80-50	14 Va. Admin. Code § 5-80- 310



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**The NAIC Annuity Disclosure Model Regulation:  
Disclosure Standards in Annuity Distribution**

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**I. Scope of Outline**

A. This outline summarizes the elements of the NAIC Annuity Disclosure Model Regulation, the required Disclosure Statement and the required NAIC Buyer's Guide to Fixed Deferred Annuities, including a supplement for Equity Indexed Annuities.

B. The NAIC Annuity Disclosure Model Regulation can be found at NAIC Model Reporting Service 245-I (April 2006).

**II. Objective of the Annuity Disclosure Model Regulation**

A. To provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education.

1. The regulation specifies the minimum information which must be disclosed and the method and timing of delivering it.
2. The regulation seeks to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

**III. Annuities Covered by the Regulation**

A. All group and individual annuity contracts, except:

1. Registered or non-registered variable annuities.
2. Immediate and deferred annuities having only non-guaranteed elements.

3. Annuities used to fund:
  - a) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);
  - b) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,
  - c) A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or
  - d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
4. Structured Settlement Annuities.
5. Note: Under the model regulation, states may optionally elect to exclude charitable gift annuities and structured settlement annuities also.

#### **IV. Information Mandated in Required NAIC Disclosure Statement**

- A. The generic name of the contract, the company product name, if different, form number, and the fact that it is an annuity;
- B. The insurer's name and address;
- C. A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:
  1. The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;
  2. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
  3. Periodic income options both on a guaranteed and non-guaranteed basis;
  4. Any value reductions caused by withdrawals from or surrender of the contract;
  5. How values in the contract can be accessed;
  6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. Impact of any rider, such as a long-term care rider.

D. Specific dollar amount or percentage charges and fees, which must be listed with an explanation of how they apply.

E. Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

F. Insurers must define terms used in the disclosure statement in language understandable by a typical person in the target market.

**V. Required NAIC Buyer's Guide to Fixed Deferred Annuities (appears at the end of the outline).**

A. A Buyer's Guide prepared by the NAIC provides information about different aspects of annuities, such as

1. What an annuity is.
2. Descriptions of the different kinds of annuities.
  - a) Single premium or multiple premium.
  - b) Immediate or deferred.
  - c) Fixed or variable.
3. How interest rates are set for the deferred variable annuity.
  - a) Explanation of current interest rate.
  - b) Explanation of minimum guaranteed rate.
  - c) Explanation of multiple interest rates.
4. Description of charges in the contract.
  - a) Surrender or withdrawal charges.
  - b) Free withdrawal features.
  - c) Contract fee.
  - d) Transaction fee.
  - e) Percentage of premium charge.
  - f) Premium tax charge.

5. Fixed Annuity Benefits

- a) Annuity income payments.
- b) Annuity payment options.
  - (1) Life only.
  - (2) Life annuity with period certain.
  - (3) Joint and survivor.

**VI. Timetable for Delivery of Required Disclosure Statement and Buyer's Guide:**

A. At or before the time of application if annuity application is taken in a *face-to-face meeting*.

B. No later than five (5) business days after the completed application is received by the insurer, if annuity application is taken by means *other than in a face-to-face meeting*.

1. With applications received from a *direct solicitation through the mail*:

a) Inclusion of a Buyer's Guide and Disclosure Statement in the direct mail solicitation satisfies the requirement for delivery no later than five (5) business days after receipt of the application.

2. *For applications received via the Internet*:

a) Taking reasonable steps to make the Buyer's Guide and Disclosure Statement available for viewing and printing on the insurer's website satisfies the requirement for delivery no later than five (5) business day of receipt of the application.

3. Annuity solicitations in other than face-to-face meetings must include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. Alternatively, the insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

4. *Extended Free-Look Period*: where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. The free look runs concurrently with any other free look provided under state law or regulation.

**VII. Required Report to Contract Owners**

A. For annuities in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer

must provide each contract owner with a report, *at least annually*, on the status of the contract that contains at least the following information:

1. The beginning and end date of the current report period;
2. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
3. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
4. The amount of outstanding loans, if any, as of the end of the current report period.

**VIII.** [ACLI's State-by-State Index to the NAIC Annuity Disclosure Model Regulation](#) appears in the chart preceeding this outline.

**IX.** [NAIC Buyer's Guides](#) Appear on the Pages Immediately Following

# Buyer's Guide for Deferred Annuities



## NAIC Buyer's Guide for Deferred Annuities

It's important that you understand how annuities can be different from each other so you can choose the type of annuity that's best for you. The purpose of this Buyer's Guide is to help you do that. This Buyer's Guide isn't meant to offer legal, financial, or tax advice. You may want to consult independent advisors that specialize in these areas.

**This Buyer's Guide is about deferred annuities in general and some of their most common features. It's not about any particular annuity product.** The annuity you select may have unique features this Guide doesn't describe. It's important for you to carefully read the material you're given or ask your annuity salesperson, especially if you're interested in a particular annuity or specific annuity features.

This Buyer's Guide includes questions you should ask the insurance company or the annuity salesperson (the agent, producer, broker, or advisor). Be sure you're satisfied with the answers before you buy an annuity.



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## What Is an Annuity?

An annuity is a contract with an insurance company. All annuities have one feature in common, and it makes annuities different from other financial products. *With an annuity, the insurance company promises to pay you income on a regular basis for a period of time you choose*—including the rest of your life.

### When Annuities Start to Make Income Payments

Some annuities begin paying income to you soon after you buy it (an **immediate** annuity). Others begin at some later date you choose (a **deferred** annuity).

### How Deferred Annuities Are Alike

There are ways that *most* deferred annuities are alike.

- They have an **accumulation** period and a **payout** period. During the accumulation period, the value of your annuity changes based on the type of annuity. During the payout period, the annuity makes income payments to you.
- They offer a basic death benefit. If you die during the accumulation period, a deferred annuity with a basic death benefit pays some or all of the annuity's value to your survivors (called beneficiaries) either in one payment or multiple payments over time. The amount is usually the greater of the annuity account value or the minimum guaranteed surrender value. If you die after you begin to receive income payments (**annuitize**), your chosen survivors may not receive anything *unless*: 1) your annuity guarantees to pay out at least as much as you paid into the annuity, or 2) you chose a payout option that continues to make payments after your death. For an extra cost, you may be able to choose enhanced death benefits that increase the value of the basic death benefit.

#### Sources of Information

**Contract:** The legal document between you and the insurance company that binds both of you to the terms of the agreement.

**Disclosure:** A document that describes the key features of your annuity, including what is guaranteed and what isn't, and your annuity's fees and charges. If you buy a variable annuity, you'll receive a prospectus that includes detailed information about investment objectives, risks, charges, and expenses.

**Illustration:** A personalized document that shows how your annuity features might work. Ask what is guaranteed and what isn't and what assumptions were made to create the illustration.

- You usually have to pay a charge (called a **surrender** or **withdrawal charge**) if you take some or all of your money out too early (usually before a set time period ends). Some annuities may not charge if you withdraw small amounts (for example, 10% or less of the account value) each year.
- Any money your annuity earns is **tax deferred**. That means you won't pay income tax on earnings until you take them out of the annuity.
- You can add features (called **riders**) to many annuities, usually at an extra cost.
- An annuity salesperson must be licensed by your state insurance department. A person selling a variable annuity also must be registered with FINRA<sup>1</sup> as a representative of a broker/dealer that's a FINRA member. In some states, the state securities department also must license a person selling a variable annuity.

1. FINRA (Financial Industry Regulatory Authority) regulates the companies and salespeople who sell variable annuities.

- Insurance companies sell annuities. You want to buy from an insurance company that's financially sound. There are various ways you can research an insurance company's financial strength. You can visit the insurance company's website or ask your annuity salesperson for more information. You also can review an insurance company's rating from an independent rating agency. Four main firms currently rate insurance companies. They are A.M. Best Company, Standard and Poor's Corporation, Moody's Investors Service, and Fitch Ratings. Your insurance department may have more information about insurance companies. An easy way to find contact information for your insurance department is to visit [www.naic.org](http://www.naic.org) and click on "States and Jurisdictions Map."
- Insurance companies usually pay the annuity salesperson after the sale, but the payment doesn't reduce the amount you pay into the annuity. You can ask your salesperson how they earn money from the sale.

## How Deferred Annuities Are Different

There are differences among deferred annuities. Some of the differences are:

- Whether you pay for the annuity with one or more than one payment (called a **premium**).
- The types and amounts of the **fees, charges, and adjustments**. While almost all annuities have *some* fees and charges that could reduce your account value, the types and amounts can be different among annuities. *Read the Fees, Charges, and Adjustments section in this Buyer's Guide for more information.*
- Whether the annuity is a **fixed** annuity or a **variable** annuity. How the value of an annuity changes is different depending on whether the annuity is fixed or variable.

*Fixed annuities* guarantee your money will earn at least a minimum interest rate. Fixed annuities may earn interest at a rate higher than the minimum but only the minimum rate is guaranteed. The insurance company sets the rates.

*Fixed indexed annuities* are a type of fixed annuity that earns interest based on changes in a market index, which measures how the market or part of the market performs. The interest rate is guaranteed to never be less than zero, even if the market goes down.

*Variable annuities* earn investment returns based on the performance of the investment portfolios, known as "subaccounts," where you choose to put your money. The return earned in a variable annuity isn't guaranteed. The value of the subaccounts you choose could go up or down. If they go up, you could make money. But, if the value of these subaccounts goes down, you could lose money. Also, income payments to you could be less than you expected.

- Some annuities offer a **premium bonus**, which usually is a lump sum amount the insurance company adds to your annuity when you buy it or when you add money. It's usually a set percentage of the amount you put into the annuity. Other annuities offer an **interest bonus**, which is an amount the insurance company adds to your annuity when you earn interest. It's usually a set percentage of the interest earned. You may not be able to withdraw some or all of your premium bonus for a set period of time. *Also, you could lose the bonus if you take some or all of the money out of your annuity within a set period of time.*

What Is an Annuity?

## How Does the Value of a Deferred Annuity Change?

### Fixed Annuities

Money in a fixed deferred annuity earns interest at a rate the insurer sets. The rate is **fixed** (won't change) for some period, usually a year. After that rate period ends, the insurance company will set another fixed interest rate for the next rate period. *That rate could be higher or lower than the earlier rate.*

Fixed deferred annuities *do* have a guaranteed minimum interest rate—the lowest rate the annuity can earn. It's stated in your contract and disclosure and can't change as long as you own the annuity. Ask about:

- The *initial interest* rate – What is the rate? How long until it will change?
- The *renewal interest* rate – When will it be announced? How will the insurance company tell you what the new rate will be?

#### Fixed Deferred Indexed Formulas

**Annual Point-to-Point** – Change in index calculated using two dates one year apart.

**Multi-Year Point-to-Point** – Change in index calculated using two dates more than one year apart.

**Monthly or Daily Averaging** – Change in index calculated using multiple dates (one day of every month for monthly averaging, every day the market is open for daily averaging). The average of these values is compared with the index value at the start of the index term.

**Monthly Point-to-Point** – Change in index calculated for each month during the index term. Each monthly change is limited to the “cap rate” for positive changes, but not when the change is negative. At the end of the index term, all monthly changes (positive and negative) are added. If the result is positive, interest is added to the annuity. If the result is negative or zero, no interest (0%) is added.

### Fixed Indexed Annuities

Money in a fixed indexed annuity earns interest based on changes in an index. Some indexes are measures of how the overall financial markets perform (such as the S&P 500 Index or Dow Jones Industrial Average) during a set period of time (called the **index term**). Others measure how a specific financial market performs (such as the Nasdaq) during the term. The insurance company uses a formula to determine how a change in the index affects the amount of interest to add to your annuity at the *end of each index term*. Once interest is added to your annuity for an index term, those earnings usually are locked in and changes in the index in the next index term don't affect them. If you take money from an indexed annuity before an index term ends, *the annuity may not add all of the index-linked interest for that term to your account.*

Insurance companies use different formulas to calculate the interest to add to your annuity. They look at changes in the index over a period of time. See the box “*Fixed Deferred Indexed Formulas*” that describes how changes in an index are used to calculate interest.

The formulas insurance companies use often mean that interest added to your annuity is based on only *part* of a change in an index over a set period of time. **Participation rates, cap rates, and spread rates** (sometimes called margin or asset fees) all are terms that describe ways the amount of interest added to your annuity may not reflect the full change in the index. But *if the index goes down over that period, zero interest is added to your annuity.* Then your annuity value won't go down as long as you don't withdraw the money.

When you buy an indexed annuity, you aren't investing directly in the market or the index. Some indexed annuities offer you more than one index choice. Many indexed annuities also offer the choice to put part of your money in a fixed interest rate account, with a rate that won't change for a set period.

## Variable Annuities

Money in a variable annuity earns a return based on the performance of the investment portfolios, known as “**subaccounts**,” where you choose to put your money. Your investment choices likely will include subaccounts with different types and levels of risk. Your choices will affect the return you earn on your annuity. Subaccounts usually have no guaranteed return, but you may have a choice to put some money in a fixed interest rate account, with a rate that won't change for a set period.

The value of your annuity can change every day as the subaccounts' values change. If the subaccounts' values increase, your annuity earns money. But *there's no guarantee that the values of the subaccounts will increase. If the subaccounts' values go down, you may end up with less money in your annuity than you paid into it.*

An insurer may offer several versions of a variable deferred annuity product. The different versions usually are identified as **share classes**. The key differences between the versions are the fees you'll pay every year you own the annuity. The rules that apply if you take money out of the annuity also may be different. Read the prospectus carefully. Ask the annuity salesperson to explain the differences among the versions.

### How Insurers Determine Indexed Interest

**Participation Rate** – Determines how much of the increase in the index is used to calculate index-linked interest. A participation rate usually is for a set period. The period can be from one year to the entire term. Some companies guarantee the rate can never be lower (higher) than a set minimum (maximum). Participation rates are often less than 100%, particularly when there's no cap rate.

**Cap Rate** – Typically, the maximum rate of interest the annuity will earn during the index term. Some annuities guarantee that the cap rate will never be lower (higher) than a set minimum (maximum). Companies often use a cap rate, especially if the participation rate is 100%.

**Spread Rate** – A set percentage the insurer subtracts from any change in the index. Also called a “margin or asset fee.” Companies may use this instead of or in addition to a participation or cap rate.

## What Other Information Should You Consider?

### Fees, Charges, and Adjustments

Fees and charges reduce the value of your annuity. They help cover the insurer's costs to sell and manage the annuity and pay benefits. The insurer may subtract these costs directly from your annuity's value. Most annuities have fees and charges but they can be different for different annuities. Read the contract and disclosure or prospectus carefully and ask the annuity salesperson to describe these costs.

A **surrender** or **withdrawal charge** is a charge if you take part or all of the money out of your annuity during a set period of time. The charge is a percentage of the amount you take out of the annuity. The percentage usually goes down each year until the surrender charge period ends. Look at the contract and the disclosure or prospectus for details about the charge. Also look for any waivers for events (such as a death) or the right to take out a small amount (usually up to 10%) each year without paying the charge. If you take all of your money out of an annuity, you've surrendered it and no longer have any right to future income payments.

Some annuities have a **Market Value Adjustment (MVA)**. An MVA could increase or decrease your annuity's account value, cash surrender value, and/or death benefit value if you withdraw money from your account. In general, if interest rates are *lower* when you

withdraw money than they were when you bought the annuity, the MVA could *increase* the amount you could take from your annuity. If interest rates are *higher* than when you bought the annuity, the MVA could *reduce* the amount you could take from your annuity. Every MVA calculation is different. Check your contract and disclosure or prospectus for details.

## How Annuities Make Payments

### Annuitize

At some future time, you can choose to **annuitize** your annuity and start to receive guaranteed fixed income payments for life or a period of time you choose. After payments begin, you can't take any other money out of the annuity. You also usually can't change the amount of your payments. For more information, see "*Payout Options*" in this Buyer's Guide. If you die before the payment period ends, your survivors may not receive any payments, depending on the payout option you choose.

### Full Withdrawal

You can withdraw the cash surrender value of the annuity in a lump sum payment and end your annuity. *You'll likely pay a charge to do this if it's during the surrender charge period.* If you withdraw your annuity's cash surrender value, your annuity is cancelled. Once that happens, you can't start or continue to receive regular income payments from the annuity.

### Partial Withdrawal

You may be able to withdraw *some* of the money from the annuity's cash surrender value without ending the annuity. Most annuities with surrender charges let you take out a certain amount (usually up to 10%) each year without paying surrender charges on that amount. Check your contract and disclosure or prospectus. Ask your annuity salesperson about other ways you can take money from the annuity without paying charges.

### Living Benefits for Fixed Annuities

Some fixed annuities, especially fixed indexed annuities, offer a **guaranteed living benefits** rider, usually at an extra cost. A common type is called a guaranteed lifetime withdrawal benefit that guarantees to make income payments you can't outlive. While you get payments, the money still in your annuity continues to earn interest. You can choose to stop and restart the payments or you might be able to take extra money from your annuity. Even if the payments reduce the annuity's value to zero at some point, you'll continue to get payments for the rest of your life. If you die while receiving payments, your survivors may get some or all of the money left in your annuity.

### Annuity Fees and Charges

**Contract fee** – A flat dollar amount or percentage charged once or annually.

**Percentage of purchase payment** – A front-end sales load or other charge deducted from each premium paid. The percentage may vary over time.

**Premium tax** – A tax some states charge on annuities. The insurer may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments, or when it pays a death benefit to your beneficiary.

**Transaction fee** – A charge for certain transactions, such as transfers or withdrawals.

\*\*\*

**Mortality and expense (M&E) risk charge** – A fee charged on **variable annuities**. It's a percentage of the account value invested in subaccounts.

**Underlying fund charges** – Fees and charges on a **variable annuity's** subaccounts; may include an investment management fee, distribution and service (12b-1) fees, and other fees.



## Living Benefits for Variable Annuities

Variable annuities may offer a benefit at an extra cost that guarantees you a minimum account value, a minimum lifetime income, or minimum withdrawal amounts regardless of how your subaccounts perform. See “*Variable Annuity Living Benefit Options*” at right. Check your contract and disclosure or prospectus or ask your annuity salesperson about these options.

## How Annuities Are Taxed

Ask a tax professional about your individual situation. The information below is general and should not be considered tax advice.

Current federal law gives annuities special tax treatment. Income tax on annuities is deferred. That means you aren't taxed on any interest or investment returns while your money is in the annuity. This isn't the same as tax-free. You'll pay ordinary income tax when you take a withdrawal, receive an income stream, or receive each annuity payment. When you die, your survivors will typically owe income taxes on any death benefit they receive from an annuity.

There are other ways to save that offer tax advantages, including Individual Retirement Accounts (IRAs). You can buy an annuity to fund an IRA, *but you also can fund your IRA other ways and get the same tax advantages.* When you take a withdrawal or receive payments, you'll pay ordinary income tax on all of the money you receive (not just the interest or the investment return). You also may have to pay a 10% tax penalty if you withdraw money before you're age 59½.

## Finding an Annuity That's Right for You

An annuity salesperson who suggests an annuity must choose one that they think is right for you, based on information from you. They need complete information about your life and financial situation to make a suitable recommendation. Expect a salesperson to ask about your age; your financial situation (assets, debts, income, tax status, how you plan to pay for the annuity); your tolerance for risk; your financial objectives and experience; your family circumstances; and how you plan to use the annuity. If you aren't comfortable with the annuity, ask your annuity salesperson to explain why they recommended it. Don't buy an annuity you don't understand or that doesn't seem right for you.

### Variable Annuity Living Benefit Options

**Guaranteed Minimum Accumulation Benefit (GMAB)** – Guarantees your account value will equal some percentage (typically 100%) of premiums less withdrawals, at a set future date (for example, at maturity). If your annuity is worth less than the guaranteed amount at that date, your insurance company will add the difference.

**Guaranteed Minimum Income Benefit (GMIB)** – Guarantees a minimum lifetime income. You usually must choose this benefit when you buy the annuity and must annuitize to use the benefit. There may be a waiting period before you can annuitize using this benefit.

**Guaranteed Lifetime Withdrawal Benefit (GLWB)** – Guarantees you can make withdrawals for the rest of your life, up to a set maximum percentage each year.

### Payout Options

You'll have a choice about how to receive income payments. These choices usually include:

- For your lifetime
- For the longer of your lifetime or your spouse's lifetime
- For a set time period
- For the longer of your lifetime or a set time period



Within each annuity, the insurer *may* guarantee some values but not others. Some guarantees may be only for a year or less while others could be longer. Ask about risks and decide if you can accept them. For example, it's possible you won't get all of your money back *or* the return on your annuity may be lower than you expected. It's also possible you won't be able to withdraw money you need from your annuity without paying fees *or* the annuity payments may not be as much as you need to reach your goals. These risks vary with the type of annuity you buy. All product guarantees depend on the insurance company's financial strength and claims-paying ability.

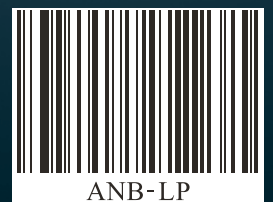
### **Questions You Should Ask**

- Do I understand the risks of an annuity? Am I comfortable with them?
- How will this annuity help me meet my overall financial objectives and time horizon?
- Will I use the annuity for a long-term goal such as retirement? If so, how could I achieve that goal if the income from the annuity isn't as much as I expected it to be?
- What features and benefits in the annuity, other than tax deferral, make it appropriate for me?
- Does my annuity offer a guaranteed minimum interest rate? If so, what is it?
- If the annuity includes riders, do I understand how they work?
- Am I taking full advantage of all of my other tax-deferred opportunities, such as 401(k)s, 403(b)s, and IRAs?
- Do I understand all of the annuity's fees, charges, and adjustments?
- Is there a limit on how much I can take out of my annuity each year without paying a surrender charge? Is there a limit on the *total* amount I can withdraw during the surrender charge period?
- Do I intend to keep my money in the annuity long enough to avoid paying any surrender charges?
- Have I consulted a tax advisor and/or considered how buying an annuity will affect my tax liability?
- How do I make sure my chosen survivors (beneficiaries) will receive any payment from my annuity if I die?

*If you don't know the answers or have other questions, ask your annuity salesperson for help.*

### **When You Receive Your Annuity Contract**

When you receive your annuity contract, carefully review it. Be sure it matches your understanding. Also, read the disclosure or prospectus and other materials from the insurance company. Ask your annuity salesperson to explain anything you don't understand. In many states, a law gives you a set number of days (usually 10 to 30 days) to change your mind about buying an annuity after you receive it. This often is called a **free look** or **right to return** period. Your contract and disclosure or prospectus should prominently state your free look period. If you decide during that time that you don't want the annuity, you can contact the insurance company and return the contract. Depending on the state, you'll either get back all of your money or your current account value.



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BUYER'S GUIDE TO  
FIXED DEFERRED  
ANNUITIES  
WITH  
APPENDIX FOR  
EQUITY-INDEXED  
ANNUITIES



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Prepared by the

*NAIC*

**National Association of Insurance Commissioners**

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

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 IT IS  
IMPORTANT

That you understand the differences among various annuities so you can choose the kind that best fits your needs. This guide focuses on fixed deferred annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your agent or the company. Make sure you're satisfied with the answers before you buy.

## WHAT IS AN ANNUITY?

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.

An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.



Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefits of annuity contracts.

A deferred annuity has two parts or periods. During the accumulation period, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity. During the second period, called the payout period, the company pays income to you or to someone you choose.

## WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're considering and the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

*This Buyer's Guide will focus on individual fixed deferred annuities.*

## SINGLE PREMIUM OR MULTIPLE PREMIUM

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You pay the insurance company only one payment for a single premium annuity. You make a series of payments for a multiple premium annuity. There are two kinds of multiple premium annuities. One kind is a flexible premium contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a scheduled premium annuity, the contract spells out your payments and how often you'll make them.

## IMMEDIATE OR DEFERRED

With an immediate annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a deferred annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

## FIXED OR VARIABLE

### • *Fixed*

During the accumulation period of a fixed deferred annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the payout period, the amount of each income payment to you is generally set when the payments start and will not change.

### • *Variable*

During the accumulation period of a variable annuity, the insurance company puts your premiums (less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account).



## HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time. Usually, what these rates will be is entirely up to the insurance company.

### CURRENT INTEREST RATE

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not charge for some time period.

- The initial rate is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.
- The renewal rate is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.

### MINIMUM GUARANTEED RATE

The minimum guaranteed interest rate is the lowest rate your annuity will earn. This rate is stated in the contract.



### MULTIPLE INTEREST RATES

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods.

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. You get only one of the accumulated values depending on which benefit you choose.

## WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

### SURRENDER OR WITHDRAWAL CHARGES

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a withdrawal charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a surrender charge. In either case, the company may figure the charge as a percentage of the value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a window, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a bail-out option.

In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a rolling surrender or withdrawal charge.

Some annuity contracts have a market value adjustment feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with an MVA feature may credit a higher rate than an annuity without the feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.



**FREE WITHDRAWAL**  
Your annuity may have a limited free withdrawal feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.

#### **CONTRACT FEE**

A contract fee is a flat dollar amount charged either once or annually.

#### **TRANSACTION FEE**

A transaction fee is a charge per premium payment or other transaction.

#### **PERCENTAGE OF PREMIUM CHARGE**

A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.

#### **PREMIUM TAX**

Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

## WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?

### ANNUITY INCOME PAYMENTS

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's benefit rate in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.

There is a table of guaranteed benefit rates in each annuity contract. Most companies have current benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company generally uses the benefit rate in effect at the time to figure the amount of your income payment.

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you.





*Life Only*  
The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependants have enough income of their own.

#### *Life Annuity with Period Certain*

The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This period certain is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity. Because the "period certain" is an added benefit, each income payment will be smaller than in a life-only option.

#### *Joint and Survivor*

The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be able to choose to have payments continue for a set length of time. Because the survivor feature is an added benefit, each income payment is smaller than in a life-only option.

#### **DEATH BENEFIT**

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

## CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?

While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.

## WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.

Part of the payments you receive from annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you draw the accumulation before age 59 ½. The Internal Revenue Code also has rules about distributions after the death of a contract holder.

Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.

You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.



## "FREE LOOK" PROVISION?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a free look or right to return period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.

## HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:



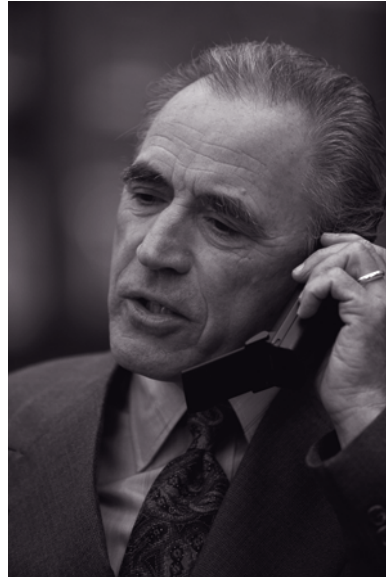
- How much retirement income will I need in addition to what I will get from Social Security and my pension?
- Will I need that additional income only for myself or for myself and someone else?
- How long can I leave my money in the annuity?
- When will I need income payments?
- Does the annuity let me get money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?



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## WHAT QUESTIONS SHOULD I ASK MY AGENT OR THE COMPANY?

- Is this a single premium or multiple premium contract?
- Is this an equity-indexed annuity?
- What is the initial interest rate and how long is it guaranteed?
- Does the initial rate include a bonus rate and how much is the bonus?
- What is the guaranteed minimum interest rate?
- What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?
- Are there withdrawal or surrender charges or penalties if I want to end my contract early and take out all of my money? How much are they?
- Can I get a partial withdrawal without paying surrender or other charges or losing interest?
- Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?
- Is there a market value adjustment (MVA) provision in my annuity?
- What other charges, if any, may be deducted from my premium or contract value?
- If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change? Is there a death benefit? How is it set? Can it change?
- What income payment options can I choose? Once I choose a payment option, can I change it?



## FINAL POINTS TO CONSIDER Page 88 of Appendix

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule of charges that could mean new expenses you must pay directly or indirectly.

You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in. Be sure you understand the effect of all charges.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.



Remember that the quality of service that you can expect from the company and the agent is a very important factor in your decision.

When you receive your annuity contract, **READ IT CAREFULLY!!** Ask the agent and company for an explanation of anything you don't understand. Do this before any free look period ends.

Compare information or similar contracts from several companies. Comparing products may help you make better decisions.

If you have a specific question or can't get answers you need from the agent or company, contact your state insurance department.



## APPENDIX I EQUITY-INDEXED ANNUITIES

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

## EQUITY-INDEXED ANNUITIES?



An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500)<sup>1</sup>, which is an equity index. The value of any index varies from day to day and is not predictable.

When you buy an equity-indexed annuity you own an insurance contract. You are not buying shares of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

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## HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest you get and when you get it depends on the features of your particular annuity.



Your equity-indexed annuity, like other fixed annuities also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death benefits. The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases.

## WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula.

### INDEXING METHOD

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

### TERM

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

### PARTICIPATION RATE

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% ( $9\% \times 70\% = 6.3\%$ ). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

## CAP RATE OR CAP Page 93 of Appendix

Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.

## FLOOR ON EQUITY INDEX-LINKED INTEREST

The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases, your fixed annuity will have a minimum guaranteed value.

## AVERAGING

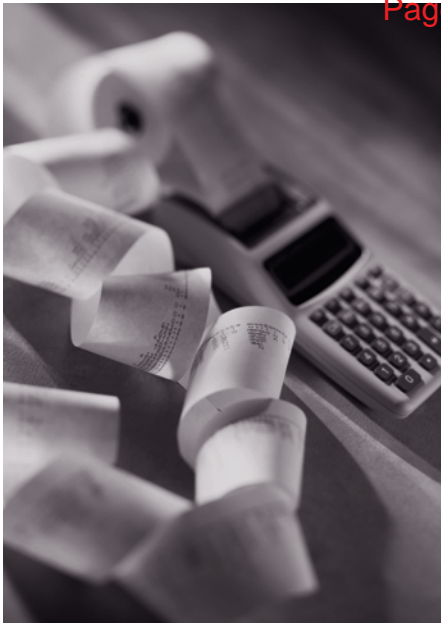
In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.

## INTEREST COMPOUNDING

Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.







### MARGIN/SPREAD/ ADMINISTRATIVE FEE

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This percentage, sometimes referred to as the "margin," "spread," or "administrative fee," might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% ( $10\% - 2.25\% = 7.75\%$ ). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.

### VESTING

Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

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## HOW DO THE COMMON INDEXING METHODS DIFFER?

### ANNUAL RESET

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.

### HIGH-WATER MARK

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

### LOW-WATER MARK

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

### POINT-TO-POINT

The index-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.



## WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

### FEATURES

#### ANNUAL RESET

Since the interest earned is "locked in" annually and the index value is "reset" at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.

#### HIGH-WATER MARK

Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle of the term, then drops off at the end of the term.

#### LOW-WATER MARK

Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end of the term.

#### POINT-TO-POINT

Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other designs.

Generally, equity-indexed annuities offer preset combinations of features. You may have to make trade-offs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

## TRADE-OFFS

### ANNUAL RESET

Your annuity's participation rate may change each year and generally will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year.

### HIGH-WATER MARK

Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

### LOW-WATER MARK

Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

### POINT-TO-POINT

Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end of the term.

## WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?

### CAP ON INTEREST EARNED

While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.

### AVERAGING

Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of the index-linked interest you earn when the index rises either near the start or at the end of the term.

### PARTICIPATION RATE

The participation rate may vary greatly from one annuity to another and from time to time within a particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.

### INTEREST COMPOUNDING

It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a high participation rate.

## WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?

In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

## ARE DIVIDENDS INCLUDED IN THE INDEX?

Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.



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## HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?



The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?
- Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?
- Or, am I somewhere in between these two extremes and willing to take some risks?



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## HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.





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QUESTIONS YOU SHOULD ASK  
YOUR AGENT OR THE COMPANY

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities.

- How long is the term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?



- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?
- Can I get a partial withdrawal without paying charges or losing interest? Does my contract have vesting? If so, what is the rate of vesting?



## FINAL POINTS TO CONSIDER

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Remember to read your annuity contract carefully when you receive it. Ask your agent or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the agent or company, contact your state insurance department.



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**NAIC Insurance and Annuities Replacement Model Regulation:  
A Systemic Approach to Appropriate Sales Practices**

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**I. NAIC Insurance and Annuities Replacement Model Regulation**

A. In June 2000, the NAIC adopted substantial amendments to the 1998 Insurance and Annuities Replacement Model Regulation. This regulation establishes substantial protections for consumers through required systems of supervision, control, monitoring, and recordkeeping for insurers and producers. Additionally, the regulation requires plain-English notices, and signed disclosure about the replacement transaction.

1. The NAIC's Model Regulation and amendments promote uniformity among state insurance regulations.
2. Citation: Insurance and Annuities Replacement Model Regulation, NAIC Model Regulation Service-July 2006 at III-621-1.

**B. Approach of the amended regulation**

1. The amended regulation establishes duties for insurance producers, replacing insurers, and existing insurers designed to protect consumers.
  - a. For example, insurers using insurance producers must, among other things:
    - (1) Maintain a *system of supervision and control*;
    - (2) Have the *capacity to monitor* each producer's life and annuity replacements for that insurer;
    - (3) Ascertain that required *sales material and illustrations are complete and accurate*; and
    - (4) *Maintain records* of required notification forms and illustrations that can be produced.
  - b. A required notice of replacement must be presented, read to consumers, and signed by the producer and consumer.
2. The regulation lists illustrative violations, and establishes penalties that may include the revocation or suspension of a producer's or company's license, monetary fines, and forfeiture of commissions or compensation. Commissioners may require insurers to make

restitution, and restore policy values with interest when violation are material to the sale. [See, Section 8 of the regulation].

C. Overview of Issue

1. A replacement occurs when an individual uses existing life insurance policy or annuity contract values to purchase a new policy or contract.
2. A replacement may involve the use of the entire value of an existing policy or contract, as in the case of a surrender, or it may involve the use of only a portion of the existing values.
3. Under the NAIC Model as amended in 2000, the use of *any* portion of the values of an existing policy or contract to purchase a new policy or contract constitutes replacement, including borrowing, assigning dividends, lapsing, or forfeiting.
  - a. External replacement occurs when a company replaces the life or annuity product of another company.
  - b. Internal replacement occurs when a company replaces a life or annuity contract that it has already issued.

D. *Purpose* of the Amended NAIC Replacement Regulation

1. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.
2. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions, and to:
  - a. Assure that purchasers receive information with which a decision can be made in his or her own best interest;
  - b. Reduce the opportunity for misrepresentation and incomplete disclosure; and
  - c. Establish penalties for failure to comply with the regulation.

E. *Regulation Applies to Variable Life Insurance and Variable Annuity Replacements*

1. The term *replacement* is defined in the regulation to mean a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
  - a. Lapsed, forfeited, surrendered or partially surrendered,

assigned to the replacing insurer or otherwise terminated;

- b. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
  - c. Amended so as to effect either a reduction in force of for which benefits would be paid;
  - d. Reissued with any reduction in cash value; or
  - e. Used in a financed purchase.
2. The regulation excuses variable life and variable annuity contracts from requirements in Sections 5(A)(2) and 6(B) to provide illustrations or policy summaries.
- a. In place of the policy summaries and illustrations requirement, the regulation mandates “premium or contract distribution amounts and identification of the appropriate prospectus or offering circular” instead.
  - b. In all other respects, the regulation fully applies to individual variable contract replacements.

F. *Exceptions* from regulation for group contracts

1. The regulation does not apply to transactions involving:
- a. Policies or contracts used to fund:
    - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
    - (2) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
    - (3) A governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
    - (4) A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
  - b. Group life insurance or group annuities where there is no

direct solicitation of individuals by an insurance producer.

c. Credit life insurance.

G. Duties of Producers and Insurers in Replacement Transactions

1. Duties of insurers that use producers [Section 4.]

a. Under the regulation, each insurer must:

(1) *Maintain a system of supervision and control* to insure compliance with the requirements of this regulation that shall *include at least* the following:

(a) *Inform its producers of the requirements of the regulation* and incorporate the requirements of the regulation into all relevant *producer training manuals* prepared by the insurer;

(b) *Provide to each producer a written statement of the company's position with respect to the acceptability of replacements* providing guidance to its producer as to the appropriateness of these transactions;

(c) *A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with the regulation's standards;*

(d) Procedures to *confirm* that the *requirements* of this regulation have been *met*; and

(e) Procedures to *detect transactions that are replacements of existing policies* or contracts by the existing insurer, but that have not been identified as such by the applicant or producer.

(2) *Have the capacity to produce*, upon request, and make available to the Insurance Department, *records of each producer's*:

(a) *Replacements*, including financed purchases, as a percentage of the producer's total annual sales for life insurance and annuity contracts not exempted from this regulation;

(b) *Number of lapses* of policies and contracts



by the producer as a percentage of the producer's total annual sales for life insurance and annuity contracts not exempted from this regulation;

- (c) Number of transactions that are *unidentified replacements of existing policies* or contracts by the existing insurer detected by the company's monitoring system as required by Section (4)(A)(5) of the regulation; and
  - (d) *Replacements, indexed by replacing producer and existing insurer.*
- (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
  - (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Attachment 1 to the regulation;
  - (5) When the applicant has existing policies or contracts, retain completed and signed copies of the notice regarding replacements in its home or regional office for at least five years after the termination or expiration of the proposed policy or contract;
  - (6) When the applicant has existing policies or contracts, obtain and retain copies of any sales material as required by Section 3(E) of the regulation, the basic illustration and any supplemental illustrations used in the sale and the producer's and applicant's signed statements with respect to financing and replacement in its home or regional office for at least five years after the termination or expiration of the proposed policy or contract
  - (7) Records required to be retained by the regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process which accurately reproduces the actual document.

## 2. Duties of Replacing Insurers that Use Producers [Section 6].

- a. Where a replacement is involved in the transaction, the replacing insurer shall:
  - (1) Verify that the required forms are received and are in compliance with the regulation;
  - (2) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available *illustration or policy summary* for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer; [*note: this illustration and policy summary requirement does not apply to variable contracts.*]
  - (3) Be able to produce copies of the notification regarding replacement required in Section 4(B), *indexed by producer, in its home or regional office* for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
  - (4) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a *variable or market value adjustment policy or contract*, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.
- b. In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control [*internal replacements*] allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to *financed purchases* the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

c. If an insurer *prohibits the use of sales material other than that approved by the company*, as an alternative to the requirements of Section 3(E) the insurer may:

(1) Require with each application a statement *signed by the producer* that:

- Represents that the producer used only company approved sales material;
  - *Lists*, by identifying number or other descriptive language, the *sales material that was used*; and
  - States that copies of all sales material were left with the applicant in accordance with Section 3(D); and
- Within ten days of the issuance of the policy or contract:
- (a) Notify the applicant by sending a letter or by verbal communication with the applicant *by a person whose duties are **separate from the marketing area** of the insurer*, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Section 3(D);
  - (b) Provide the applicant with a *toll free number* to contact *company personnel involved in the compliance function* if such is not the case; and
  - (c) Stress the importance of retaining copies of the sales material for future reference; and
- Keep a copy of the letter or other verification in the policy file at the home or regional office for at least five years after the termination or expiration of the policy or contract.

### 3. Duties of the Existing Insurer [Section 6].

a. Where a replacement is involved in the transaction, the existing insurer shall:

(1) Upon notice that its existing policy or contract may be replaced or a policy may be part of a financed purchase, *retain copies* of the notification in its home or regional office, *indexed by replacing insurer*, notifying it of the

replacement for at least five years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.

(2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.

(3) Upon receipt of a request to borrow, surrender or withdraw any policy or contract values, send to the applicant a notice, advising the policy or contract owner of the effect release of policy or contract values will have on the non-guaranteed elements, face amount or surrender value of the policy or contract from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy or contract owner. In the case of *consecutive automatic premium loans or systematic withdrawals* from a contract, the insurer is only required to send the notice at the time of the first loan or withdrawal.

#### 4. Duties of Producers [Section 4].

- a. A producer who initiates an application must submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.
- b. If the applicant answered "yes" to the question regarding existing coverage referred to in Subsection (A), the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Attachment 1 to the regulation or other substantially similar form approved by the commissioner. *The notice shall be signed by both the applicant and the producer* attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.
- c. The notice shall list all life insurance policies or annuities

proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

- d. In connection with a replacement transaction *the producer shall leave with the applicant* at the time an application for a new policy or contract is completed *the original or a copy of all sales material*. With respect to electronically presented sales material, it shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.
- e. Except as provided in Section 5(C) of the regulation, in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, *a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations used in the transaction*

#### H. Selected Definitions

- 1. Section 2(D) defines the term *financed purchase* as “the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy.”
  - a. If a withdrawal, surrender, or borrowing involving the policy values of an existing policy are used to pay premiums on a new policy owned by the same policyholder *within thirteen months before or after the effective date of the new policy* and is known by the replacing insurer, or if the withdrawal, surrender, or borrowing is shown on any illustration of the existing and new policies made available to the prospective policyowner by the insurer or its producers, it will be *deemed prima facie evidence of a financed purchase*.
- 2. Section 2(I) defines the term registered contract as “a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.”

I. Several aspects of the amended NAIC model regulation parallel SEC and FINRA positions concerning Section 1035 exchanges and bonus annuity sales.

1. Selected list of parallel regulatory concepts

- a. FINRA Guideline on Variable Life Insurance Distribution: NTM 00-44 (June 2000).
- b. FINRA Guidelines on Supervisory Responsibilities: NTM 99-45 (June 1999).
- c. FINRA Statement on Variable Annuity Distribution: NTM 99-35 (May 1999).
- d. SEC Office of Compliance Inspections and Examinations: Indicators of “Good” Internal Controls in Variable Contract Distribution.

(1) A compilation of the SEC’s indicators drawn from speeches and seminar comments is discussed in Wilkerson, *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 20.

e. SEC Examination of Variable Annuity “Bonus” Programs

(1) Several of the items requested in the SEC’s inspection letter requested documents and information that the amended NAIC Model Replacement Regulation also addresses.

(a) Scope of documents requested in the SEC’s examinations was outlined in *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 6.

a. FINRA and SEC inspection sweeps focusing on “Section 1035 exchanges” of variable contracts and “life financing” arrangements (1998 and 1996.)

(1) These sweeps and the documentation they elicited were discussed in *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 11 and 15.

J. NAIC Model Replacement Regulation: State-by-State Chart

A chart listing the status of the NAIC Model Replacement Regulation under state insurance law appears following this outline.

**[NAIC Replacement Disclosure Examples Follow on Next Page]**

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## Attachment 1 to this Outline on the Model Replacement Regulation

### IMPORTANT NOTICE: REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

*This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.*

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy or contract and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? \_\_\_  
YES \_\_\_ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? \_\_\_ YES \_\_\_ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

**INSURER NAME**

**CONTRACT OR POLICY#**

**INSURED OR ANNUITANT: REPLACED (R) OR FINANCING (F)**

1.

2.

3.

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because \_\_\_\_\_

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name

Date

Producer's Signature and Printed Name

Date

I do not want this notice read aloud to me. \_\_\_\_\_ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?  
Could they change?  
You're older--are premiums higher for the proposed new policy?  
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.  
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.  
What surrender charges do the policies have?  
What expense and sales charges will you pay on the new policy?  
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.  
You may need a medical exam for a new policy.  
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.  
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?  
How will the premiums on your existing policy be affected?  
Will a loan be deducted from death benefits?  
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?  
What are the interest rate guarantees for the new contract?  
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?  
Is this a tax free exchange? (See your tax advisor.)  
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?  
How does the quality and financial stability of the new  
company compare with your existing company?

**(Attachment 2 to Replacement Outline)**

**NOTICE REGARDING REPLACEMENT  
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?**

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one--or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

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## ACLI LAW SURVEY

### Replacement of Life Insurance and Annuities

#### What's New?

Substantive changes in the survey are highlighted in **bold** and may reflect:

- Amendments to existing laws and regulations;
- New laws, regulations and administrative material; or
- Expansion of the scope of the survey or additional information on the topic.

This multi-state survey identifies the states that have based their life and annuity replacement requirements on the NAIC's Life Insurance and Annuities Replacement Model Regulation (613-1). The compilation specifically includes a summary of exemptions and notes if states do not follow the NAIC model with respect to exemptions.

Rather than summarizing other replacement requirements, the compilation provides citations to state law or regulations that correspond with several key elements of the NAIC model: definitions, duties of producers and insurers, and forms. Please refer to ACLI's [Law Survey: Free Look](#) for information on free look requirements for replacement policies.

ACLI hopes this compilation is helpful as a quick reference for your questions on life insurance replacement requirements. This survey does not constitute a legal opinion by ACLI staff. The Law Surveys are reviewed and updated annually. Users are encouraged to refer to the text of the statutes and regulations cited for the most current and complete information.

**Note:** No live web links are available in this survey.

March 2015  
American Council of Life Insurers  
202-624-2461

Key citation for exempt transactions in the NAIC's Life Insurance and Annuities Replacement Model Regulation (613-1):

- Unless otherwise specifically included, this regulation shall not apply to transactions involving:
  - Credit life insurance;
  - Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section [see specific state statute];
  - Group life insurance and annuities used to fund prearranged funeral contracts;
  - An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
  - Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
  - Policies or contracts used to fund (i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA); (ii) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer; (iii) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or (iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
    - Notwithstanding [the above paragraph], this regulation shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;
  - Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
  - Existing life insurance that is a non-convertible term life insurance policy that will expire in five (5) years or less and cannot be renewed;
  - Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this regulation; or
  - Structured settlements.
- Registered contracts shall be exempt from the requirements of Sections [see specific state statute] with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead."

State	Applicability and Exemptions	Key Elements/Citations
Alabama	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  AL Admin. Code 482-1-133-.02 (2)</p> <p>Follows NAIC model</p>	<p>Definitions:  AL Admin. Code 482-1-133-.03</p> <p>Duties:</p> <p>Producers:  AL Admin. Code 482-1-133-.04</p> <p>All insurers using producers:  AL Admin. Code 482-1-133-.05</p> <p>Replacing insurers that use producers:  AL Admin. Code 482-1-133-.06</p> <p>Existing insurers:  AL Admin. Code 482-1-133-.07</p> <p>Direct response:  AL Admin. Code 482-1-133-.08</p> <p>Forms:  AL Admin. Code 482-1-133 Appendix A; Appendix B; and Appendix C</p>



State	Applicability and Exemptions	Key Elements/Citations
Alaska	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  AK Admin. Code tit. 3 §26.790</p> <p>Follows NAIC model</p>	<p>Definitions:  AK Admin. Code tit. 3 §26.819</p> <p>Duties:</p> <p>Producers:  AK Admin. Code tit. 3 §26.795</p> <p>All insurers using producers:  AK Admin. Code tit. 3 §26.800</p> <p>Replacing insurers that use producers:  AK Admin. Code tit. 3 §26.805</p> <p>Existing insurers:  AK Admin. Code tit. 3 §26.810</p> <p>Direct response:  AK Admin. Code tit. 3 §26.815</p> <p>Forms:  AK Admin. Code tit. 3 §26.795, Appendix A  AK Admin. Code tit. 3 §26.815, Appendix A, Appendix B</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>Arizona</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  AZ Rev. Stat. Ann. §20-1241.01</p> <p>Follows NAIC model</p>	<p>Definitions:  AZ Rev. Stat. Ann. §20-1241</p> <p>Duties:</p> <p>Producers:  AZ Rev. Stat. Ann. §20-1241.03</p> <p>All insurers using producers:  AZ Rev. Stat. Ann. §20-1241.04</p> <p>Replacing insurers:  AZ Rev. Stat. Ann. §20-1241.05</p> <p>Existing insurers:  AZ Rev. Stat. Ann. §20-1241.06</p> <p>Direct response:  AZ Rev. Stat. Ann. §20-1241.07</p> <p>Forms:  AZ Admin. Code R20-6-212</p> <p>NAIC Replacement Model Appendix A, Appendix B, Appendix C adopted by reference.</p>

State	Applicability and Exemptions	Key Elements/Citations
Arkansas	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>AR ADC INS 97</p> <p>AR Bulletin 14-83</p> <p>Follows NAIC Model</p>	<p>Definitions: AR ADC INS 97</p> <p>Duties:</p> <p>Producers: AR Code Ann. §23-66-307</p> <p>AR Bulletin 6-89</p> <p>All insurers using producers: AR ADC INS 97</p> <p>Replacing insurers: AR ADC INS 97</p> <p>Existing insurers: AR ADC INS 97</p> <p>Direct response: AR ADC INS 97</p> <p>Replacements that do not conform with AR Code Ann. §23-66-307 are defined as "churning." AR Code Ann. §23-66-206 (2)A.</p> <p>See also guidance in AR Bulletin 1-2010, AR Bulletin 4-2012, AR Bulletin 8-2009 and AR Bulletin 8-2004.</p>

State	Applicability and Exemptions	Key Elements/Citations
<p><b>California</b></p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p><a href="#">CA Ins. Code §10509.3</a></p> <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance when a contractual change or a conversion privilege is being exercised or when a term conversion privilege is exercised among corporate affiliates</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same insurer</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, with provisos</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> </ul>	<p>Definitions:</p> <p>CA Ins. Code §10509.2</p> <p>CA Ins. Code §10509.3</p> <p>Duties:</p> <p>Producers:</p> <p>CA Ins. Code §10509.4</p> <p>Insurers:</p> <p>CA Ins. Code §10509.5</p> <p>All insurers using producers:</p> <p><b>CA Ins. Code §10509.6 [Amendment to take effect July 1, 2015]</b></p> <p>Direct response:</p> <p>CA Ins. Code §10509.7</p> <p>Forms:</p> <p>CA Ins. Code §10509.4 (d)</p>

State	Applicability and Exemptions	Key Elements/Citations
Colorado	<p>Applies to life insurance and annuities.</p> <p>Exemptions:            3 CO ADC INS 4-1-4 Section 3</p> <p>Follows NAIC Model</p>	<p>Definitions:            3 CO ADC INS 4-1-4 Section 4</p> <p>Duties:</p> <p>Producers:            3 CO ADC INS 4-1-4 Section 5</p> <p>All insurers using producers:            3 CO ADC INS 4-1-4 Section 6</p> <p>Replacing insurers:            3 CO ADC INS 4-1-4 Section 7</p> <p>Existing insurers:            3 CO ADC INS 4-1-4 Section 8</p> <p>Direct response:            3 CO ADC INS 4-1-4 Section 9</p> <p>Forms:            3 CO ADC INS 4-1-4 Appendix A; Appendix B; and Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
Connecticut	<p>Applies to life insurance and annuities.</p> <p>Exemptions: CT ADC §38a-435-1(b)</p> <p>Follows NAIC model with some deviations</p>	<p>Definitions: CT ADC §38a-435-2</p> <p>Duties:</p> <p>Producers: CT ADC §38a-435-3</p> <p>All insurers using producers: CT ADC §38a-435-4</p> <p>Replacing insurers: CT ADC §38a-435-5</p> <p>Existing insurers: CT ADC §38a-435-6</p> <p>Direct response: CT ADC §38a-435-7</p> <p>Forms: CT ADC §38a-435-8 App. A CT ADC §38a-435-8 App. B CT ADC §38a-435-8 App. C</p>

State	Applicability and Exemptions	Key Elements/Citations
Delaware	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>18 DE Admin. Code 1204-4.0</li> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• An application to the existing insurer that issued the existing life insurance and a contractual change or conversion privilege is being exercised</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control.</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> <li>• Life insurance or annuity products issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums (with provisos)</li> </ul>	<p>Definitions:</p> <ul style="list-style-type: none"> <li>18 DE Admin. Code 1204-2.0 (replacement);</li> <li>18 DE Admin. Code 1204-3.0 (other)</li> </ul> <p>Duties:</p> <p>Producers:</p> <ul style="list-style-type: none"> <li>18 DE Admin. Code 1204-5.0</li> </ul> <p>All insurers:</p> <ul style="list-style-type: none"> <li>18 DE Admin. Code 1204-6.0</li> </ul> <p>All insurers using producers:</p> <ul style="list-style-type: none"> <li>18 DE Admin. Code 1204-7.0</li> </ul> <p>Direct response:</p> <ul style="list-style-type: none"> <li>18 DE Admin. Code 1204-8.0</li> </ul> <p>Forms:</p> <ul style="list-style-type: none"> <li>18 DE Admin. Code 1204, Exhibit A</li> </ul>
District of Columbia		<p>No applicable provisions.</p>



State	Applicability and Exemptions	Key Elements/Citations
<p><b>Florida</b></p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions (from some requirements):</p> <p>69 FL Admin. Code Ann. 69B-151.004 and</p> <p>69 FL Admin. Code Ann. 69O-151.004</p> <ul style="list-style-type: none"> <li>• Industrial insurance</li> <li>• Group, franchise, and individual credit life</li> <li>• Group life insurance and life insurance policies issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility of premiums</li> <li>• An application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised</li> <li>• Existing life insurance that is a non-convertible term life insurance policy which will expire in five years or less and cannot be renewed, unless such policy has tabular cash values</li> <li>• Proposed life insurance that is to replace existing life insurance issued under a binding or conditional receipt delivered by the same company</li> <li>• Variable life insurance or annuities under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account</li> </ul> <p><b>FL Stat. Ann. §627.4605</b></p> <ul style="list-style-type: none"> <li>• A notice of replacement is not required in a transaction involving:</li> <li>• An application to the current insurer that issued the current policy or contract when a contractual change or conversion privilege is being exercised</li> <li>• A current policy or contract that is being replaced by the same insurer pursuant to a program filed with and approved by the office</li> <li>• A term conversion privilege that is being exercised among corporate affiliates.</li> </ul>	<p>Definitions:</p> <p>69 FL Admin. Code Ann. 69B-151.002</p> <p>69 FL Admin. Code Ann. 69O-151.002 (replacement);</p> <p>69 FL Admin. Code Ann. 69B-151.003</p> <p>69 FL Admin. Code Ann. 69O-151.003 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>69 FL Admin. Code Ann. 69B-151.005</p> <p>69 FL Admin. Code Ann. 69O-151.005 (agent);</p> <p>69 FL Admin. Code Ann. 69B-151.006</p> <p>69 FL Admin. Code Ann. 69O-151.006 (replacing agent)</p> <p>Replacing insurers:</p> <p>69 FL Admin. Code Ann. 69O-151.007</p> <p>Existing insurers:</p> <p>69 FL Admin. Code Ann. 69O-151.008</p> <p>Forms:</p> <p>69 FL Admin. Code 69B-151.010</p> <p>OIR-B2-312 "Notice to Applicant Regarding Replacement of Life Insurance" given in Exhibit A and OIR-B2-313 "Comparative Information Form" given in Exhibit B.</p> <p>Also, for information on churning, see:</p> <p><b>FL Stat. Ann. §626.9541 (1)(aa);</b></p> <p>FL Stat. Ann. §627.573;</p> <p>69 FL Admin. Code Ann. 69B-151.201 et seq. includes Form OIR-DO-1180 "Policy Disclosure Form and Instructions."</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>Georgia</p>	<p>Applies to life insurance and annuities replacing existing life insurance.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>GA Comp. R. &amp; Regs. 120-2-24-.04</li> <li>• Replacement of annuity contracts</li> <li>• Credit life</li> <li>• Group life</li> <li>• Life insurance issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos</li> </ul>	<p>Definitions: GA Comp. R. &amp; Regs. 120-2-24-.03</p> <p>Duties:</p> <p>Producers: GA Comp. R. &amp; Regs. 120-2-24-.05 (agent)</p> <p>All insurers: GA Comp. R. &amp; Regs. 120-2-24-.06</p> <p>All insurers using producers (agents): GA Comp. R. &amp; Regs. 120-2-24-.07</p> <p>Direct response: GA Comp. R. &amp; Regs. 120-2-24-.08</p> <p>Forms: GA Comp. R. &amp; Regs. 120-2-24-.05, Exhibit A GA Comp. R. &amp; Regs. 120-2-24-.08, Exhibit A</p>
<p>Hawaii</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions: HI Rev. Stat. §431:10D-501</p> <p>Follows NAIC model</p>	<p>Definitions: HI Rev. Stat. §431:10D-502</p> <p>Duties:</p> <p>Producers: HI Rev. Stat. §431:10D-503</p> <p>All insurers using producers: HI Rev. Stat. §431:10D-504</p> <p>Replacing insurers: HI Rev. Stat. §431:10D-505</p> <p>Existing insurers: HI Rev. Stat. §431:10D-506</p> <p>Direct response: HI Rev. Stat. §431:10D-507</p>

State	Applicability and Exemptions	Key Elements/Citations
Idaho	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p><a href="#">ID Admin. Code 18.01.41.011</a></p> <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Existing insurer--An application to the insurer that issued the existing life insurance and a contractual change or conversion privilege being exercised</li> <li>• Binding or conditional receipt issued by same company--proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Common ownership or control--transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control, with provisos</li> </ul>	<p>Definitions:</p> <p><a href="#">ID Admin. Code 18.01.41.004</a> (replacement),</p> <p><a href="#">ID Admin. Code 18.01.41.005</a> (other)</p> <p>Duties:</p> <p>Producers:</p> <p><a href="#">ID Admin. Code 18.01.41.012</a></p> <p>All insurers:</p> <p><a href="#">ID Admin. Code 18.01.41.013</a></p> <p>All insurers using producers:</p> <p><a href="#">ID Admin. Code 18.01.41.014</a></p> <p>Direct response:</p> <p><a href="#">ID Admin. Code 18.01.41.015</a></p> <p>Forms:</p> <p><a href="#">ID Admin. Code 18.01.41.016</a>, Exhibit A</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>Illinois</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>IL Admin. Code tit. 50 §917.50               <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life and group annuities</li> <li>• Life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for the tax deductibility of premiums</li> <li>• Registered contracts except that the appropriate prospectus or offering circular shall be given to the applicant</li> <li>• Existing life insurance that is a non-convertible term life insurance policy which will expire in five years or less and cannot be renewed</li> <li>• Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries under common ownership or control, with provisos</li> <li>• The total cash surrender value of all existing policies which would be affected by the replacement is less than \$500 and the sum of their face amounts is less than \$5,000</li> </ul> </li> </ul>	<p>Definitions:</p> <p>IL Admin. Code tit. 50 §917.30 (replacement)            IL Admin. Code tit. 50 §917.40 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>IL Admin. Code tit. 50 §917.60</p> <p>Replacing insurers:</p> <p>IL Admin. Code tit. 50 §917.70</p> <p>Direct response:</p> <p>IL Admin. Code tit. 50 §917.80</p> <p>Forms:</p> <p>IL Admin. Code tit. 50 §917, Exhibit A; Exhibit B; Exhibit C (direct response); Exhibit D (comparative information)</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>Indiana</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>760 IN Admin. Code 1-16.1-4</p> <ul style="list-style-type: none"> <li>• Individual and group credit life</li> <li>• Group life and life policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos</li> <li>• An existing life insurance policy in which a contractual change or conversion privilege is being exercised</li> </ul>	<p>Definitions:</p> <p>760 IN Admin. Code 1-16.1-2 (replacement)            760 IN Admin. Code 1-16.1-3 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>760 IN Admin. Code 1-16.1-5</p> <p>Replacing insurers:</p> <p>760 IN Admin. Code 1-16.1-6</p> <p>Existing insurers:</p> <p>760 IN Admin. Code 1-16.1-8</p> <p>Direct response:</p> <p>760 IN Admin. Code 1-16.1-7</p> <p>Forms:</p> <p>760 IN Admin. Code 1-16.1-12.5, Exhibit A            760 IN Admin. Code 1-16.1-13.5, Exhibit B            (direct response)</p>

State	Applicability and Exemptions	Key Elements/Citations
Iowa	<p>Applies to life insurance and annuities.</p> <p>Exemptions: IA Admin. Code 191—16.23(507B)</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions: IA Admin. Code 191—16.22(507B)</p> <p>Duties:</p> <p>Producers: IA Admin. Code 191—16.24(507B)</p> <p>All insurers using producers: IA Admin. Code 191—16.25(507B)</p> <p>Replacing insurers: IA Admin. Code 191—16.26(507B)</p> <p>Existing insurers: IA Admin. Code 191—16.27(507B)</p> <p>Direct response: IA Admin. Code 191—16.28(507B)</p> <p>Forms: IA Admin. Code 191—16, Appendix A; Appendix B; Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>Kansas</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p><b>KS Admin. Regs. 40-2-12 (b)</b></p> <ul style="list-style-type: none"> <li>• Application for the new life insurance is made to the same insurer that issued the existing life insurance, and a contractual policy change or conversion privilege is being exercised</li> <li>• New life insurance is provided under: (A) group life; or (B) mass marketed group life</li> <li>• Existing life insurance is a non-convertible term policy with five years or less to expire and which cannot be renewed</li> <li>• Solicitation is made by direct mail, with provisos</li> <li>• Policy is issued in connection with a pension, profit sharing, an individual retirement account, or other benefit plan qualifying for an income tax deduction of premiums</li> </ul>	<p>Definitions:  <b>KS Admin. Regs. 40-2-12 (a)</b></p> <p>Duties:</p> <p>Producers:  <b>KS Admin. Regs. 40-2-12 (c), (d), (h), (i), (j)</b></p> <p>All insurers:  <b>KS Admin. Regs. 40-2-12 (e)</b></p> <p>Replacing insurers:  <b>KS Admin. Regs. 40-2-12 (f)</b></p> <p>Note: Please see (f)(6) for information concerning the contestability of a replaced policy.</p> <p>Forms:  <b>KS Admin. Regs. 40-2-12 (g), Exhibit A (different insurer); Exhibit B (same insurer); Exhibit C</b></p>



State	Applicability and Exemptions	Key Elements/Citations
Kentucky	<p>Applies to life insurance.</p> <p>Exemptions:            KY Rev. Stat. Ann. §304.12-030 (3)</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates and deviates on contestability provision. Please see note.</p>	<p>Definitions:            KY Rev. Stat. Ann. §304.12-030 (1)            806 KY Admin. Regs. 12:080, Section 1</p> <p>Duties:</p> <p>Producers:            806 KY Admin. Regs. 12:080, Section 3</p> <p>All insurers using producers:            806 KY Admin. Regs. 12:080, Section 4</p> <p>Replacing insurers:            KY Rev. Stat. Ann. §304.12-030 (2)            806 KY Admin. Regs. 12:080, Section 5</p> <p>Note: Please see Section 5 (e) for information concerning the contestability of a replaced policy.            KY Advisory Opinion 2014-2</p> <p>Existing insurers:            806 KY Admin. Regs. 12:080, Section 6</p> <p>Direct response:            806 KY Admin. Regs. 12:080, Section 7</p> <p>Forms:            806 KY Admin. Regs. 12:080, Section 9, Office Forms A, B, and C (referenced);            KY Bulletin 83-DM-004</p>

State	Applicability and Exemptions	Key Elements/Citations
Louisiana	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">LA Admin. Code 37:XIII.8905 (Reg. 70)</a></p> <p>Follows NAIC model but also includes exemption for insurer marketing under the Home Service Marketing Distribution System and does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions:  <a href="#">LA Admin. Code 37:XIII.8903 (Reg. 70)</a></p> <p>Duties:</p> <p>Producers:  <a href="#">LA Admin. Code 37:XIII.8907 (Reg. 70)</a></p> <p>All insurers using producers:  <a href="#">LA Admin. Code 37:XIII.8909 (Reg. 70)</a></p> <p>Replacing insurers:  <a href="#">LA Admin. Code 37:XIII.8911 (Reg. 70)</a></p> <p>Existing insurers:  <a href="#">LA Admin. Code 37:XIII.8913 (Reg. 70)</a></p> <p>Direct response:  <a href="#">LA Admin. Code 37:XIII.8915 (Reg. 70)</a></p> <p>Forms:  <a href="#">LA Admin. Code 37:XIII.8921 (Reg. 70)</a> Appendix A  <a href="#">LA Admin. Code 37:XIII.8923 (Reg. 70)</a> Appendix B  <a href="#">LA Admin. Code 37:XIII.8925 (Reg. 70)</a> Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
Maine	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  Code ME R. 02-031 Ch. 919 §1</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions:  Code ME R. 02-031 Ch. 919 §2</p> <p>Duties:</p> <p>Producers:  Code ME R. 02-031 Ch. 919 §3</p> <p>Insurers using producers:  Code ME R. 02-031 Ch. 919 §4</p> <p>Replacing insurers:  Code ME R. 02-031 Ch. 919 §5</p> <p>Existing insurers:  Code ME R. 02-031 Ch. 919 §6</p> <p>Direct response:  Code ME R. 02-031 Ch. 919 §7</p> <p>Forms:  Code ME R. 02-031  Ch. 919 Appendix A; Appendix B (direct response);  Appendix C (direct response)</p>

State	Applicability and Exemptions	Key Elements/Citations
Maryland	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  MD Regs. Code 31.09.05.02</p> <p>Follows NAIC model</p>	<p>Definitions:  MD Regs. Code 31.09.05.03</p> <p>Duties:</p> <p>Producers:  MD Regs. Code 31.09.05.04</p> <p>All insurers using producers:  MD Regs. Code 31.09.05.05</p> <p>Replacing insurers:  MD Regs. Code 31.09.05.06</p> <p>Existing insurers:  MD Regs. Code 31.09.05.07</p> <p>Direct response:  MD Regs. Code 31.09.05.08</p> <p>Forms:  MD Regs. Code 31.09.05.10, Replacement Form A  MD Regs. Code 31.09.05.11, Replacement Form B  MD Regs. Code 31.09.05.12, Replacement Form C</p>

State	Applicability and Exemptions	Key Elements/Citations
Massachusetts	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p><a href="#">211 CMR 34.03</a></p> <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life and group annuities</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Internal replacements where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control</li> <li>• Non-contributory group life</li> <li>• Life insurance policies issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility of premiums</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> </ul>	<p>Definitions:</p> <p><a href="#">211 CMR 34.02</a></p> <p>Duties:</p> <p>Producers:</p> <p><a href="#">211 CMR 34.04</a></p> <p>All insurers:</p> <p><a href="#">211 CMR 34.05</a></p> <p>All insurers using producers:</p> <p><a href="#">211 CMR 34.06</a></p> <p>Direct response:</p> <p><a href="#">211 CMR 34.07</a></p> <p>Forms:</p> <p><a href="#">211 CMR 34.04</a></p>
Michigan	<p>Applies to life insurance, excluding annuities in definition of life insurance.</p> <p>Exemptions:</p> <p><a href="#">MI Admin. Code 500.605</a></p> <ul style="list-style-type: none"> <li>• Application for the new life insurance made to the same insurer that issued the existing life insurance or to an affiliate of the existing insurer</li> <li>• New life insurance provided under any of the following plans with provisos: (a) group term life; (b) certain mass marketed policies; (c) life insurance policies issued in connection with a pension, profit sharing, or other benefit plan qualifying for tax-deductibility of premiums</li> <li>• Existing life insurance is a nonconvertible term policy which cannot be renewed and which would expire within five years after the initiation of the transaction</li> </ul>	<p>Definitions:</p> <p><a href="#">MI Admin. Code 500.601</a></p> <p>Duties:</p> <p>Producers:</p> <p><a href="#">MI Admin. Code 500.602</a></p> <p>All insurers:</p> <p><a href="#">MI Admin. Code 500.603</a></p> <p>Replacing insurers:</p> <p><a href="#">MI Admin. Code 500.604</a></p> <p>Forms:</p> <p><a href="#">MI Bulletin 84-06</a></p>

State	Applicability and Exemptions	Key Elements/Citations
Minnesota	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p><a href="#">MN Stat. Ann. §61A.54</a></p> <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance or annuity, where a contractual change or a conversion privilege is being exercised</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li> </ul>	<p>Definitions:</p> <p><a href="#">MN Stat. Ann. §61A.53</a></p> <p>Duties:</p> <p>Producers:</p> <p><a href="#">MN Stat. Ann. §61A.55</a></p> <p>All insurers:</p> <p><a href="#">MN Stat. Ann. §61A.56</a></p> <p>All insurers using producers:</p> <p><a href="#">MN Stat. Ann. §61A.57</a></p> <p>Direct response:</p> <p><a href="#">MN Stat. Ann. §61A.58</a></p> <p>Forms:</p> <p><a href="#">MN Stat. Ann. §61A.60</a>, Subdivisions 1, 2, and 3</p>

State	Applicability and Exemptions	Key Elements/Citations
Mississippi	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">MS ADC INS 99-2 Rule 14.01</a></p> <p>Follows NAIC model</p>	<p>Definitions:  <a href="#">MS ADC INS 99-2 Rule 14.02</a></p> <p>Duties:</p> <p>Producers:  <a href="#">MS ADC INS 99-2 Rule 14.03</a></p> <p>All insurers using producers:  <a href="#">MS ADC INS 99-2 Rule 14.04</a></p> <p>Replacing insurers:  <a href="#">MS ADC INS 99-2 Rule 14.05</a></p> <p>Existing insurers:  <a href="#">MS ADC INS 99-2 Rule 14.06</a></p> <p>Direct response:  <a href="#">MS ADC INS 99-2 Rule 14.07</a></p> <p>Forms:  <a href="#">MS ADC INS 99-2 Appendix A, Rule 14.11;</a>  <a href="#">Appendix B, Rule 14.12;</a> and <a href="#">Appendix C, Rule 14.13</a></p>



State	Applicability and Exemptions	Key Elements/Citations
Missouri	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>20 MO Code Regs. 400-5.400 (4)               <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control, with provisos</li> <li>• Policies issued in connection with a pension, profit sharing and individual retirement account or other benefit plan qualifying for tax deductibility of premium</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> </ul> </li> </ul>	<p>Definitions:</p> <p>20 MO Code Regs. 400-5.400 (2) and (3)</p> <p>Duties:</p> <p>Producers:</p> <p>20 MO Code Regs. 400-5.400 (5)</p> <p>All insurers:</p> <p>20 MO Code Regs. 400-5.400 (6)</p> <p>All insurers using producers:</p> <p>20 MO Code Regs. 400-5.400 (7)</p> <p>Direct response:</p> <p>20 MO Code Regs. 400-5.400 (8)</p> <p>Forms:</p> <p>20 MO Code Regs. 400-5.400, Exhibit A and Exhibit B</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>Montana</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">MT Admin. R. 6.6.304</a></p> <p>Follows NAIC model but does not include exemption for group life insurance and annuities used to fund prearranged funeral contracts and does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions:  <a href="#">MT Admin. R. 6.6.303</a></p> <p>Duties:</p> <p>Producers:  <a href="#">MT Admin. R. 6.6.305</a></p> <p>All insurers using producers:  <a href="#">MT Admin. R. 6.6.311</a></p> <p>Replacing insurers:  <a href="#">MT Admin. R. 6.6.306</a></p> <p>Existing insurers:  <a href="#">MT Admin. R. 6.6.308</a></p> <p>Direct response:  <a href="#">MT Admin. R. 6.6.307</a></p> <p>Forms:  <a href="#">MT Admin. R. 6.6.313</a>, NAIC model forms Appendix A; Appendix B; and Appendix C incorporated by reference</p>

State	Applicability and Exemptions	Key Elements/Citations
Nebraska	<p>Applies to life insurance and annuities.</p> <p>Exemptions:                      210 NE Admin. Code Ch. 19 §003</p> <p>Follows NAIC model</p>	<p>Definitions:                      210 NE Admin. Code Ch. 19 §004 (replacement);                      210 NE Admin. Code Ch. 19 §005 (other)</p> <p>Duties:</p> <p>Producers:                      210 NE Admin. Code Ch. 19 §006</p> <p>All insurers:                      210 NE Admin. Code Ch. 19 §007</p> <p>All insurers using producers:                      210 NE Admin. Code Ch. 19 §008</p> <p>Replacing insurers:                      210 NE Admin. Code Ch. 19 §009                      NE Bulletin CB-56</p> <p>Existing insurers:                      210 NE Admin. Code Ch. 19 §010</p> <p>Direct response:                      210 NE Admin. Code Ch. 19 §011</p> <p>Forms:                      210 NE Admin. Code Ch. 19 Exhibit A</p>

State	Applicability and Exemptions	Key Elements/Citations
Nevada	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>NV Admin. Code 686A.540</p> <ul style="list-style-type: none"> <li>• Individual credit life</li> <li>• Group life insurance, group credit life insurance or life insurance issued in connection with a pension, profit-sharing or other benefit plan that qualifies for tax deductibility of premiums</li> <li>• Variable life under which the death benefits and cash values vary in accordance with the unit values of investments held in a separate account</li> <li>• Application made to an insurer under an existing policy for a contractual change or the exercise of a privilege of conversion</li> <li>• Existing policy which is a nonconvertible, term policy, will expire in five years or less and cannot be renewed</li> <li>• Proposed life insurance which is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Policy solicited through direct response with a face value of \$5,000 or less</li> </ul>	<p>Definitions:</p> <p>NV Admin. Code 686A.510</p> <p>NV Admin. Code 686A.530</p> <p>Duties:</p> <p>Producers:</p> <p>NV Admin. Code 686A.550</p> <p>NV Admin. Code 686A.567</p> <p>Replacing insurers:</p> <p>NV Admin. Code 686A.555</p> <p>NV Bulletin 2008-007 (annuities)</p> <p>Direct response:</p> <p>NV Admin. Code 686A.560</p> <p>Forms:</p> <p>NV Admin. Code 686A.563</p>

State	Applicability and Exemptions	Key Elements/Citations
New Hampshire	<p>Applies to life insurance and annuities.</p> <p>Exemptions:                      NH Code Admin. Ins 302.02</p> <p>Follows NAIC model</p>	<p>Definitions:                      NH Code Admin. Ins 302.03</p> <p>Duties:</p> <p>Producers:                      NH Code Admin. Ins 302.04</p> <p>All insurers using producers:                      NH Code Admin. Ins 302.05</p> <p>Replacing insurers:                      NH Code Admin. Ins 302.06</p> <p>Existing insurers:                      NH Code Admin. Ins 302.07</p> <p>Direct response:                      NH Code Admin. Ins 302.08</p> <p>Forms:                      NH Code Admin. Ins 302, Appendix A; Appendix B; and Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>New Jersey</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">NJ Admin. Code §11:4-2.1</a></p> <p>Follows NAIC model but does not specifically apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy.</p> <p>[Note: Provisions previously set to expire in 2011 have been extended until 2018.]</p>	<p>Definitions:  <a href="#">NJ Admin. Code §11:4-2.2</a></p> <p>Duties:            Producers:  <a href="#">NJ Admin. Code §11:4-2.3</a></p> <p>Insurers that use producers:  <a href="#">NJ Admin. Code §11:4-2.5</a></p> <p>Replacing insurers:  <a href="#">NJ Admin. Code §11:4-2.4</a></p> <p>Existing insurers:  <a href="#">NJ Admin. Code §11:4-2.6</a></p> <p>Direct response:  <a href="#">NJ Admin. Code §11:4-2.7</a></p> <p>Forms:  <a href="#">NJ Admin. Code §11:4-2 Appendix A; Appendix B; and Appendix C</a>            (Also see <a href="#">NJ Bulletin 2005-02.</a>)</p>

State	Applicability and Exemptions	Key Elements/Citations
New Mexico	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>NM Admin Code 13.9.6 (2)</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions:</p> <p>NM Admin Code 13.9.6 (7)</p> <p>Duties:</p> <p>Producers:</p> <p>NM Admin Code 13.9.6 (8)</p> <p>All insurers using producers:</p> <p>NM Admin Code 13.9.6 (9)</p> <p>Replacing insurers using producers:</p> <p>NM Admin Code 13.9.6 (10)</p> <p>Existing insurers:</p> <p>NM Admin Code 13.9.6 (11)</p> <p>Direct response:</p> <p>NM Admin Code 13.9.6 (12)</p> <p>Forms:</p> <p>NM Admin Code 13.9.6 (14) Appendix A;</p> <p>NM Admin Code 13.9.6 (15) Appendix B;</p> <p>NM Admin Code 13.9.6 (16) Appendix C</p>



State	Applicability and Exemptions	Key Elements/Citations
<p><b>New York</b></p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p><b>11 NYCRR 51.3</b></p> <ul style="list-style-type: none"> <li>• The application for the new life insurance policy or new annuity contract is made to the same insurer that issued the existing life insurance policy or annuity contract and a contractual conversion privilege is being exercised</li> <li>• A policy change customarily granted by the insurer is being exercised, provided such change results in no additional surrender or expense charge or suicide or contestable restrictions, and only to the extent such change is approved by the Superintendent of Financial Services</li> <li>• New coverage under certain group life policies or group annuities</li> <li>• New coverage under an individual life or individual annuity whose cost is borne wholly by the applicant's employer or by an association of which the applicant is a member</li> <li>• New coverage under certain mass marketed individual life policies or individual annuity contracts</li> <li>• The existing life insurance is a nonrenewable, nonconvertible term policy with five years or less to its expiration date</li> </ul>	<p>Definitions:</p> <p><b>11 NYCRR 51.2</b></p> <p>Duties:</p> <p>Producers:</p> <p><b>11 NYCRR 51.5</b></p> <p>All insurers:</p> <p><b>11 NYCRR 51.6 (a)</b></p> <p>Replacing insurers:</p> <p><b>11 NYCRR 51.6 (b)</b></p> <p>Existing insurers:</p> <p><b>11 NYCRR 51.6 (c)</b></p> <p>Forms:</p> <p><b>11 NYCRR 51.8</b>, Appendix 10A (disclosure statement); Appendix 10B (annuity to annuity); Appendix 10C (notice); Appendix 11 (definition of replacement)</p>

State	Applicability and Exemptions	Key Elements/Citations
North Carolina	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">11 NCAC 12.0604</a></p> <p>Follows NAIC model</p>	<p>Definitions:  <a href="#">11 NCAC 12.0602</a> (replacement)  <a href="#">11 NCAC 12.0603</a> (other)</p> <p>Duties:</p> <p>Producers:  <a href="#">11 NCAC 12.0605</a></p> <p>Existing insurer:  <a href="#">11 NCAC 12.0606</a></p> <p>Insurers using producers:  <a href="#">11 NCAC 12.0607</a></p> <p>Replacing insurers using producers:  <a href="#">11 NCAC 12.0612</a></p> <p>Direct response:  <a href="#">11 NCAC 12.0608</a></p> <p>Forms:  <a href="#">11 NCAC 12.0611</a> (NAIC replacement notice by reference)</p>
North Dakota		No applicable provisions.

State	Applicability and Exemptions	Key Elements/Citations
Ohio	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  OH Admin. Code §3901-6-05 (C)(2)</p> <p>Follows NAIC model</p>	<p>Definitions:  OH Admin. Code §3901-6-05 (D)</p> <p>Duties:</p> <p>Producers:  OH Admin. Code §3901-6-05 (E)</p> <p>Insurers using producers:  OH Admin. Code §3901-6-05 (F)</p> <p>Replacing insurers using producers:  OH Admin. Code §3901-6-05 (G)</p> <p>Existing insurer:  OH Admin. Code §3901-6-05 (H)</p> <p>Direct response:  OH Admin. Code §3901-6-05 (I)</p> <p>Forms:  OH Admin. Code §3901-6-05 Appendix A; Appendix B; Appendix C</p> <p>CT ADC §38a-435-8 App. A</p>

State	Applicability and Exemptions	Key Elements/Citations
Oklahoma	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>36 OK Stat. Ann. §4032</li> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Contracts issued in connection with employee benefits or welfare plans as defined by ERISA</li> <li>• The exercise by an insured of an existing contractual right with the same insurer for the purchase of additional insurance under a guaranteed insurability provision or conversion option or any other contractual policy change privilege</li> <li>• Short-term nonrenewable life insurance policies written to cover periods of 31 days or less</li> <li>• An existing nonconvertible term life insurance policy which will expire in five years or less and which cannot be renewed</li> <li>• Proposed life insurance policy that is to replace life insurance under a binding or conditional receipt issued by the same company issuing the policy which is to be replaced</li> </ul>	<p>Definitions:</p> <p>36 OK Stat. Ann. §4033</p> <p>36 OK Stat. Ann. §4037</p> <p>Duties:</p> <p>Producers:</p> <p>36 OK Stat. Ann. §4034</p> <p>All insurers:</p> <p>36 OK Stat. Ann. §4034</p> <p>Existing insurers:</p> <p>36 OK Stat. Ann. §4034</p> <p>Forms:</p> <p>36 OK Stat. Ann. §4035 (notice)</p> <p>36 OK Stat. Ann. §4036 (applicant's statement)</p> <p>36 OK Stat. Ann. §4037 (definitions)</p>

State	Applicability and Exemptions	Key Elements/Citations
Oregon	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">OR Admin. R. 836-080-0001</a> (4) and (5)</p> <p>Follows NAIC model, but does not include exemption for group life insurance and annuities used to fund prearranged funeral contracts.</p>	<p>Definitions:  <a href="#">OR Admin. R. 836-080-0005</a></p> <p>Duties:</p> <p>Producers:  <a href="#">OR Admin. R. 836-080-0014</a></p> <p>All insurers using producers:  <a href="#">OR Admin. R. 836-080-0022</a></p> <p>Replacing insurers:  <a href="#">OR Admin. R. 836-080-0029</a></p> <p>Existing insurers:  <a href="#">OR Admin. R. 836-080-0034</a></p> <p>Direct response:  <a href="#">OR Admin. R. 836-080-0039</a></p> <p>Forms:  <a href="#">OR Admin. R. 836-080, Appendix A; Appendix B; and Appendix C</a> (available through insurance agency)</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>Pennsylvania</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p><a href="#">31 PA Code §81.3</a></p> <ul style="list-style-type: none"> <li>• Group life policies issued to creditors</li> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> </ul>	<p>Definitions:</p> <p><a href="#">31 PA Code §81.2</a></p> <p>Duties:</p> <p>Producers:</p> <p><a href="#">31 PA Code §81.4</a></p> <p>All insurers:</p> <p><a href="#">40 PA Cons. Stat. Ann. §625-9</a>;</p> <p><a href="#">31 PA Code §81.5</a></p> <p>All insurers using producers:</p> <p><a href="#">31 PA Code §81.6</a></p> <p>Direct response:</p> <p><a href="#">31 PA Code §81.7</a></p> <p>Forms:</p> <p><a href="#">31 PA Code Chapter 81, Appendix A and Appendix B</a></p>
<p>Puerto Rico</p>		<p>Forms:</p> <p><a href="#">PR ADC INS Rule 42</a></p>

State	Applicability and Exemptions	Key Elements/Citations
Rhode Island	<p>Applies to life insurance.</p> <p>Exemptions:  <a href="#">RI ADC 11-5-29:2</a></p> <p>Follows NAIC model</p>	<p>Definitions:  <a href="#">RI ADC 11-5-29:3</a></p> <p>Duties:</p> <p>Producers:  <a href="#">RI ADC 11-5-29:4</a></p> <p>All insurers using producers:  <a href="#">RI ADC 11-5-29:5</a></p> <p>Replacing insurers:  <a href="#">RI ADC 11-5-29:6</a></p> <p>Existing insurers:  <a href="#">RI ADC 11-5-29:7</a></p> <p>Direct response:  <a href="#">RI ADC 11-5-29:8</a></p> <p>Forms:  <a href="#">RI ADC 11-5-29 Appendix A</a>  <a href="#">RI ADC 11-5-29 Appendix B</a>  <a href="#">RI ADC 11-5-29 Appendix C</a></p> <p>For information on twisting and churning, see:  <a href="#">RI ADC 11-5-29:9</a></p>



State	Applicability and Exemptions	Key Elements/Citations
<p>South Carolina</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:            SC Code of Regulations R. 69-12.1, Section 1</p> <p>Follows NAIC Model</p>	<p>Definitions:            SC Code of Regulations R. 69-12.1, Section 2</p> <p>Duties:            Producers:            SC Code of Regulations R. 69-12.1, Section 3</p> <p>All insurers using producers:            SC Code of Regulations R. 69-12.1, Section 4</p> <p>Replacing insurers:            SC Code of Regulations R. 69-12.1, Section 5</p> <p>Existing insurers:            SC Code of Regulations R. 69-12.1, Section 6</p> <p>Direct response:            SC Code of Regulations R. 69-12.1, Section 7</p> <p>Forms:            SC Code of Regulations R. 69-12.1, Appendix A;            Appendix B; and Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
<p>South Dakota</p>	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  SD Admin. 20:06:08:49</p> <p>Follows NAIC Model</p>	<p>Definitions:  SD Admin. 20:06:08:38</p> <p>Duties:</p> <p>Producers:  SD Admin. 20:06:08:50</p> <p>All insurers using producers:  SD Admin. 20:06:08:54 (supervision and control)  SD Admin. 20:06:08:55 (record keeping)  SD Admin. 20:06:08:56 (signed statement)  SD Admin. 20:06:08:57 (required documents)  SD Admin. 20:06:08:58 (insurer notifications)  SD Admin. 20:06:08:59 (record format)</p> <p>Replacing insurers using producers:  SD Admin. 20:06:08:60  SD Admin. 20:06:08:61</p> <p>Existing insurers:  SD Admin. 20:06:08:62</p> <p>Direct response:  SD Admin. 20:06:08:63</p> <p>Forms:  SD ADC Art. 20:06, Ch. 20:06:08, App. D  SD ADC Art. 20:06, Ch. 20:06:08, App. E  SD ADC Art. 20:06, Ch. 20:06:08, App. F</p>

State	Applicability and Exemptions	Key Elements/Citations
Tennessee	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>• TN Comp. R. &amp; Regs. 0780-01-24-.04</li> <li>• Credit life</li> <li>• Group life insurance</li> <li>• Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> </ul>	<p>Definitions:</p> <p>TN Comp. R. &amp; Regs. 0780-01-24-.02 (replacement);</p> <p>TN Comp. R. &amp; Regs. 0780-01-24-.03 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>TN Comp. R. &amp; Regs. 0780-01-24-.05</p> <p>All insurers:</p> <p>TN Comp. R. &amp; Regs. 0780-01-24-.06</p> <p>All insurers using producers:</p> <p>TN Comp. R. &amp; Regs. 0780-01-24-.07</p> <p>Direct response:</p> <p>TN Comp. R. &amp; Regs. 0780-01-24-.08</p> <p>Forms:</p> <p>TN Comp. R. &amp; Regs. 0780-01-24-.12, Exhibit A</p>

State	Applicability and Exemptions	Key Elements/Citations
Texas	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  TX Ins. Code Ann. §1114.004</p> <p>Follows NAIC model</p>	<p>Definitions:  TX Ins. Code Ann. §1114.002 (general)  TX Ins. Code Ann. §1114.003 (policy summary)  28 TX Admin. Code §3.9502 (agent and producer)</p> <p>Duties:</p> <p>Producers:  TX Ins. Code Ann. §1114.051</p> <p>All insurers using producers:  TX Ins. Code Ann. §1114.052</p> <p>Replacing insurers that use producers:  TX Ins. Code Ann. §1114.053</p> <p>28 TX Admin. Code §3.9504</p> <p>Existing insurers:  TX Ins. Code Ann. §1114.054</p> <p>Direct response:  TX Ins. Code Ann. §1114.055</p> <p>Forms:  TX Ins. Code Ann. §1114.006</p> <p>28 TX Admin. Code §3.9503 (format)  28 TX Admin. Code §3.9504 (replacement)  28 TX Admin. Code §3.9505 (direct response)  28 TX Admin. Code §3.9506 (substantially similar notices)</p>

State	Applicability and Exemptions	Key Elements/Citations
Utah	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">UT Admin. Code R590-93 section 2</a></p> <p>Follows NAIC model</p>	<p>Definitions:  <a href="#">UT Admin. Code R590-93 section 3</a></p> <p>Duties:</p> <p>Producers:  <a href="#">UT Admin. Code R590-93 section 4</a>  <a href="#">UT Code Ann. §31A-22-429</a></p> <p>All insurers using producers:  <a href="#">UT Admin. Code R590-93 section 5</a></p> <p>Replacing insurers that use producers:  <a href="#">UT Admin. Code R590-93 section 6</a></p> <p>Existing insurers:  <a href="#">UT Admin. Code R590-93 section 7</a></p> <p>Direct response:  <a href="#">UT Admin. Code R590-93 section 8</a></p> <p>Forms:  <a href="#">UT Admin. Code R590-93 section 3, Appendix A; Appendix B; and Appendix C.</a></p>

State	Applicability and Exemptions	Key Elements/Citations
Vermont	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">VT Admin. Code 4-3-43:1 (B)</a></p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions:  <a href="#">VT Admin. Code 4-3-43:2</a></p> <p>Duties:</p> <p>Producers:  <a href="#">VT Admin. Code 4-3-43:3</a></p> <p>All insurers using producers:  <a href="#">VT Admin. Code 4-3-43:4</a></p> <p>Replacing insurers that use producers:  <a href="#">VT Admin. Code 4-3-43:5</a></p> <p>Existing insurers:  <a href="#">VT Admin. Code 4-3-43:6</a></p> <p>Direct response:  <a href="#">VT Admin. Code 4-3-43:7</a></p> <p>Forms:  <a href="#">VT Admin. Code 4-3-43: Appendix A, Appendix B, and Appendix C.</a></p>

State	Applicability and Exemptions	Key Elements/Citations
Virginia	<p>Applies to life insurance and annuities used to replace existing life insurance.</p> <p>Exemptions:  14 VA Admin. Code 5-30-30</p> <p>Follows NAIC model</p>	<p>Definitions:  14 VA Admin. Code 5-30-20</p> <p>Duties:</p> <p>Producers:  14 VA Admin. Code 5-30-40</p> <p>All insurers using producers:  14 VA Admin. Code 5-30-60</p> <p>Replacing insurers:  14 VA Admin. Code 5-30-51</p> <p>Existing insurers:  14 VA Admin. Code 5-30-55</p> <p>Direct response:  14 VA Admin. Code 5-30-70</p> <p>Forms:  14 VA Admin. Code 5-30, Form 30-A; Form 30-B, Notice Regarding Replacement; and Form 30-C, Important Notice: Replacement of Life Insurance or Annuities (direct response)</p>

State	Applicability and Exemptions	Key Elements/Citations
Washington	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>• WA Admin. Code §284-23-430</li> <li>• Credit life</li> <li>• Certain group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance when a contractual change or conversion privilege is being exercised</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> </ul>	<p>Definitions:</p> <p>WA Admin. Code §284-23-410 (replacement);</p> <p>WA Admin. Code §284-23-420 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>WA Admin. Code §284-23-440</p> <p>All insurers:</p> <p>WA Admin. Code §284-23-450</p> <p>All insurers using producers:</p> <p>WA Admin. Code §284-23-455</p> <p>Direct response:</p> <p>WA Admin. Code §284-23-460</p> <p>Forms:</p> <p>WA Admin. Code §284-23-485</p>



State	Applicability and Exemptions	Key Elements/Citations
West Virginia	<p>Applies to life insurance and annuities.</p> <p>Exemptions:                      WV Code 33-11-5a (c)                      WV Code St. R. 114-8-3</p> <p>Follows NAIC model but deviates on contestability provisions, which creates conflict. Please see notes.</p>	<p>Definitions:                      WV Code 33-11-5a (a);                      WV Code St. R. 114-8-2</p> <p>Duties:                      Producers:                      WV Code St. R. 114-8-4</p> <p>All insurers using producers:                      WV Code St. R. 114-8-5</p> <p>Replacing insurers:                      WV Code 33-11-5a (b);</p> <p>Note: Please see (b)(1) for information concerning the contestability of a replaced policy.</p> <p>WV Code St. R. 114-8-6</p> <p>Note: Please see 6.2 for information concerning the contestability of a replaced policy.</p> <p>Existing insurers:                      WV Code St. R. 114-8-7</p> <p>Direct response:                      WV Code St. R. 114-8-8</p> <p>Forms:                      WV Code St. R. 114-8 Appendix A; Appendix B; and Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
Wisconsin	<p>Applies to life insurance and annuities.</p> <p>Exemptions:  <a href="#">WI ADC Ins 2.07 (2)</a></p> <p>Follows NAIC model</p>	<p>Definitions:  <a href="#">WI ADC Ins 2.07 (3)</a></p> <p>Duties:</p> <p>Producers:  <a href="#">WI ADC Ins 2.07 (4)</a></p> <p>All insurers using producers:  <a href="#">WI ADC Ins 2.07 (5)</a></p> <p>Replacing insurers that use producers:  <a href="#">WI ADC Ins 2.07 (6)</a></p> <p>Existing insurers:  <a href="#">WI ADC Ins 2.07 (7)</a></p> <p>Direct response:  <a href="#">WI ADC Ins 2.07 (8)</a></p> <p>Forms:  <a href="#">WI ADC Ins 2.07</a>, <a href="#">Appendix I</a>; <a href="#">Appendix II (direct response)</a>; and <a href="#">Appendix III (definitions)</a></p>

State	Applicability and Exemptions	Key Elements/Citations
Wyoming	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>• WY Admin. Code Ins Gen Ch 12 §4</li> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li> </ul>	<p>Definitions:  WY Admin. Code Ins Gen Ch 12 §3</p> <p>Duties:</p> <p>Producers:  WY Admin. Code Ins Gen Ch 12 §5</p> <p>All insurers:  WY Admin. Code Ins Gen Ch 12 §6</p> <p>All insurers using producers:  WY Admin. Code Ins Gen Ch 12 §7</p> <p>Direct response:  WY Admin. Code Ins Gen Ch 12 §8</p> <p>Forms:  WY Admin. Code Ins Gen Ch 12, Replacement Form</p>

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**NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities**

Carl B. Wilkerson, Vice President & Chief Counsel-Securities & Litigation American Council of Life Insurers © 2015 All Rights Reserved.

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**I. NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.**

A. This NAIC regulation directly parallels the North American Securities Administrators Association (NASAA) credentialing regulations and was developed in close coordination with NASAA and supported by NASAA.

B. See [http://www.nasaa.org/content/Files/Senior\\_Model\\_Rule110807.pdf](http://www.nasaa.org/content/Files/Senior_Model_Rule110807.pdf)

C. The NAIC regulation and an accompanying bulleting can be obtained on the NAIC website at [http://www.naic.org/Releases/2008\\_docs/senior\\_sales.htm](http://www.naic.org/Releases/2008_docs/senior_sales.htm) .

**II. Purpose of the NAIC Regulation**

A. The regulation establishes standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product.

B. The regulation will apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by an “insurance producer,” that is defined as a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance, including annuities.

**III. Prohibited Uses of Senior-Specific Certifications and Professional Designations [Section 5]**

A. Under the regulation, it will be an unfair and deceptive act or practice in the business of insurance within the meaning of the Unfair Trade Practices Act for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

B. The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

1. Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;
2. Use of a nonexistent or self-conferred certification or professional designation;
3. Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and
4. Use of a certification or professional designation that was obtained from a certifying or designating organization that:
  - a) Is primarily engaged in the business of instruction in sales or marketing;
  - b) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
  - c) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
  - d) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.
5. Under the regulation, there is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subsection A(2)(d) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:
  - a) The American National Standards Institute (ANSI);
  - b) The National Commission for Certifying Agencies; or
  - c) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."
6. In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or

professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

- a) Use of one or more words such as “senior,” “retirement,” “elder,” or like words combined with one or more words such as “certified,” “registered,” “chartered,” “advisor,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification or professional designation; and
- b) The manner in which those words are combined.

7. For purposes of this NAIC regulation, a job title within an organization that is licensed or registered by a State or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

- a) Indicates seniority or standing within the organization; or
- b) Specifies an individual's area of specialization within the organization.

8. Under this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

**IV. State-by-State Index** to the NAIC Senior-Specific Certifications Model Regulation appears in the Appendix to this outline.

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**The Impact of State Insurance Consulting Laws and Related Provisions on Insurance Producers Performing Financial Planning Services**

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**I. The Impact of State Insurance Consulting Laws and Related Provisions on Insurance Producers Performing Financial Planning Services**

A. Background

1. A degree of variability exists in state insurance statutes and regulations concerning financial planning by life insurance agents.
2. Careful review of the various state laws and regulations is valuable in confirming proper procedures and activities.

B. NAIC Unfair Trade Practices Act provisions governing financial planning:

1. §2(M) of the NAIC Unfair Trade Practices Act defines an unfair financial planning practice by an insurance producer to be:
  - a) Holding himself or herself out directly or indirectly to the public as they "financial planner," "investment advisor," "consulted," "financial counselor," or any other specialists engaged in the business of giving financial planning for advice relating to investments, insurance, real estate tax matters or trust and estate matters when such person is in fact engaged only in the sale of policies.
  - b) Engaging in the business of financial planning without disclosing to the client prior to the execution of the agreement provided for in paragraph 3 [of this regulation], or solicitation of the sale of a product or service that:
    - (1) He or she is also an insurance salesperson, and
    - (2) That a commission for the sale of the insurance products will be received in addition to a fee for financial planning, if such is the case.

c) This NAIC provision forbids these other than commission for financial planning by insurance producers, unless such fees are based upon a written agreement, signed by the client in advance; a copy of the agreement must be given to the client at the time it is signed.

### C. Insurance Consulting Laws

1. Many states have adopted statutes or regulations generally referred to as "insurance consulting" provisions that seek to protect insurance product policyholders by preventing the receipt of insurance commissions and insurance consulting fees concerning the same sale.

2. It is unlikely that this body of law was intended to govern broad-spectrum of financial planning conducted by insurance agents in today's market. Nonetheless, financial planning and investment advisory activities could inadvertently trigger the scope and terms of the insurance consulting laws.

a) Insurance consulting laws evolved to address problems of a traditional life insurance environment, not more recent developments such as financial planning more investment advice.

b) While the application of the insurance consulting laws to financial planning is not clear, potential coverage could be triggered in two ways:

(1) Fee and commission financial planning arrangements that also involve a recommendation and ultimate purchase of insurance product;

(2) Commission only financial planning arrangements that involve the recommendation and ultimate purchase of an insurance product.

c) Insurance consulting laws generally fall into two categories:

(1) States prohibiting insurance agents from receiving both consulting fees and sales commissions in connection with the same assurance product sale.

(a) See, e.g., Connecticut Insurance Code §38 – 92h (an individual serving as a quote certified insurance consultant" is prohibited from receiving both sales commission and a consultant's commission in connection with the sale of insurance).

(2) States permitting insurance agents to obtain both consulting fees and sales commissions in connection with the same insurance product sale, providing clear



disclosure about the joint receipt of a fee and commission is communicated.

(a) See, e.g., Arkansas Insurance Department Bulletin No. 1185 (May 10, 1985): "the obvious intent of this section [§66 -- 3023 (3)] is to permit genuine utilization of the [property/casualty and life/disability] agent's expertise, for compensation, but to require proper disclosure to the client and to prevent price gouging by unscrupulous persons."

(b) See also, New Mexico Insurance Rule 80-3-6 (c) which states that "terms such as financial planner, investment advice or, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually the case.

(3) A compilation of state laws and regulations about insurance consulting laws and investment advisor provisions is set forth below.

d) A law survey on insurance consulting laws in each of the states follows this segment of the outline.

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## ACLI LAW SURVEY

# State Insurance Consulting Laws and the Status of Investment Advisers Under State Securities Codes

### What's New?

Substantive changes in the survey are highlighted in **bold** and may reflect:

- Amendments to existing laws and regulations;
- New laws, regulations and administrative material; or
- Expansion of the scope of the survey or additional information on the topic.

This ACLI Law Survey provides guidance on two categories of investment adviser regulation under state law. The first identifies and cites the definition of investment adviser under each jurisdiction's securities code. State Securities Codes follow one of three versions of the Uniform Securities Act (USA) administered by the National Conference of Commissioners on Uniform State Laws (NCCUSL) that were adopted in 1956, 1985, or 2002. The specific definition of investment adviser under each of the three USA versions is duplicated below for reference. By way of background, Congress bifurcated the regulation of investment advisers in 1996 between state and federal securities administrators when it enacted the National Securities Markets Improvements Act (NSMIA), which was designed, in part, to eliminate duplicate state and federal regulation over investment advisers. Under NSMIA, investment advisers with less than \$100 M in assets under management are subject to state securities jurisdiction. The SEC regulates investment advisers with more than \$100 M in assets under management.

The second part of this ACLI Law Survey identifies and cites "insurance consulting" laws under state insurance codes. Some states prohibit the receipt of both an insurance commission and an insurance consulting fee for the same transaction. Other states permit insurance consulting fees together with commissions if certain conditions are fulfilled, such as written disclosure about the services and compensation. Other states limit or condition the use of terminology by insurance agents, such as financial planner, investment adviser, financial consultant or financial counselor. This second part of the survey of state insurance laws provides an added resource to research on the status of investment advisers under state securities laws.

Definitions of "investment adviser":

2002 Uniform Securities Act — "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include: (A) an investment adviser representative; (B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession; (C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice; (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; (E) a federal covered investment adviser; (F) a bank or savings institution; (G) any

other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or (H) any other person excluded by rule adopted or order issued under this [Act].”

1985 Uniform Securities Act — “Investment adviser’ means a person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a business, issues or promulgates analyses or reports concerning securities. The term does not include: (1) an employee of an investment adviser; (ii) a depository institution; (iii) a lawyer, accountant, engineer, or teacher whose performance or investment advisory services is solely incidental to the practice of the person’s profession; (iv) a broker-dealer whose performance of investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for the investment advisory services; (v) a publisher, employee, or columnist of a newspaper, news magazine, or business or financial publication, or an owner, operator, producer, or employee of a cable, radio, or television network, station, or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; (vi) a person whose advice, analyses, or reports relate only to securities exempt under paragraph (1) of Section 401(b); and (vii) any other person the [Administrator], by rule or order, designates.”

1956 Uniform Securities Act — “Investment adviser’ means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. ‘Investment adviser’ does not include (1) a bank, savings institution, or trust company; (2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (5) a person whose advice, analyses, or reports relate only to securities exempted by section 402(a)(1); (6) a person who has no place of business in this state if (A) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he does not direct business communication into this state in any manner to more than five clients other than those specified in clause (A), whether or not he or any of the persons to whom the communications are directed is then present in this state; or (7) such other persons not within the intent of this paragraph as the [Administrator] may rule or order designate.”

The ACLI hopes this compilation is helpful as a quick reference for your questions on the definition of investment advisers and on consultants’ allowable fees and commissions. This survey does not constitute a legal opinion or conclusion by ACLI, its staff, or its member companies and should not be used as the sole basis for making individual company decisions or conclusions. The Law Surveys are reviewed and updated annually. Users are encouraged to refer to the text of the statutes and regulations cited for the most current and complete information.

**Note:** No live web links are available in this survey.

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State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Alabama	AL Code §8-6-2 (18)	<p>Definition: 2002.</p> <p>Exceptions: 2002 or similar plus insurer, employee or agent engaged exclusively in sale or distribution of insurance products.</p>	AL Code §27-12-17	<p>No person shall willfully collect as premium or charge for insurance any sum in excess of the premium or charge applicable to the insurance and as specified in the policy in accordance with the applicable classifications and rates as filed with, and approved by, the commissioner or, in cases where classifications, premiums, or rates are not required by this title to be so filed and approved, the premiums and charges shall not be in excess of those specified in the policy and as fixed by the insurer.</p> <p>An insurance producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case. Provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.</p>
Alaska	AK Stat. §45.55.990 (34)	<p>Definition: similar to 2002 with addition of person who engages in business of managing an investment or trading account in securities for other persons.</p> <p>Exceptions: similar to 2002 with additional exemption.</p>	AK Stat. §21.36.500 (b)	<p>Commission for the sale of an insurance product in addition to a fee for financial planning is not permissible without full disclosure to the client before the execution of required written agreement.</p>
Arizona	AZ Rev. Stat. Ann. §44-3101 (5)	<p>Definition: 2002.</p> <p>Exceptions: deviations from all models, including exception for certain insurers or producers.</p>	<p>AZ Rev. Stat. Ann. §20-465 (B)</p> <p>AZ Admin. Code R20-6-209 (D)(3)</p>	<p>Insurer and insurance producer may charge and receive a fee for services not customarily provided in the transaction of insurance if the fee is filed with the director and certain conditions exist, including written disclosure.</p> <p>An insurer or producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless that is true.</p>

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Arkansas	AR Code Ann. §23-42-102 (9)	Definition: 1956. Exceptions: 1956 without exception (5) of Act.	AR Code Ann. §23-66-310 (d)  AR Code Ann. §23-66-206 (15)(A)(ii)	Any fee charged by a licensed insurance agent or producer for services which are not customarily associated with the solicitation, negotiation, or servicing of an insurance policy or contract are not prohibited if certain conditions exist, including disclosure and written agreement.  Prohibits an insurance producer from engaging in the business of financial planning without disclosing in writing to the client, prior to the execution of a written agreement or solicitation of the sale of a product or service, that he or she is also an insurance salesperson and a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if the sale involves a commission.  Prohibits the use of terms such as financial planner, investment adviser, financial consultant, or financial counselor to imply that the insurance agent is primarily engaged in an advisory business in which compensation is unrelated to sales, unless actually the case. <b>An insurance producer may not charge an additional fee for services that are customarily associated with the solicitation, negotiation, or servicing of policies.</b>
California	CA Corp. Code §25009 and CA Corp. Code §25009.1	Definition: Similar to 2002. Exceptions: 2002 without exception (E) of Act.	AR ADC INS 17 §7C	Insurance analysts shall not charge a fee for any service which is customarily associated with the solicitation of insurance sales or the servicing of insurance contracts written by the licensee or contracts for which the licensee is receiving compensation from the insurer. Analyst cannot charge fee unless based on written agreement. For analysts also licensed as producers, written statement shall indicate so and, as such, receives commissions.
Colorado	CO Rev. Stat. Ann. §11-51-201 (9.5)	Definition: 2002. Exceptions: 2002 with deviations, including additional exceptions.	3 CO ADC INS 1-2-9	Insurance producers may charge fees for services such as financial planning for which a commission is not received from insurer. Fees may be charged under certain circumstances, including a signed disclosure.

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Connecticut	CT Gen. Stat. Ann. §36b-3 (11)	Definition: 1956. Exceptions: 1956 with deviations, including exception for insurers.	CT Gen. Stat. Ann. §38a-707  CT Gen. Stat. Ann. §38a-734  CT ADC § 38a-819-37 (C)	Producers may not receive compensation other than commissions unless written disclosure is provided and signed.  Certified consultants receiving fees from person served are prohibited from receiving payments from insurers or producers for sale of insurance. Not applicable to insurance producer who is an advisory representative of a registered investment adviser, if written disclosure is provided and signed.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Delaware	DE Code Ann. tit. 6 §73-103 (a)(8)	Definition: 2002. Exceptions: Similar to 2002, without exception (G) of Act.	DE Code Ann. tit. 18 §1714 (e) and DE Admin. Code 18 500 502 sec. 2.3  DE Admin. Code 18 1200 1203 (6.3)	Both consulting (planning) fees and insurance sales commissions prohibited.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
District of Columbia	DC Code Ann. §31-5601.01 (17)	Definition: similar to 2002. Exceptions: 2002 with deviations, including additional exceptions for insurance producers and others.	None applicable.	
Florida	FL Stat. Ann. §517.021 (13)	Definition: similar to 1956. Exceptions: Elements of 1956 and 2002 with additional exceptions.	FL Stat. Ann. §626.99 (5)(c)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Georgia	GA Code Ann. §10-5-2 (17)	Definition: 2002. Exceptions: 2002.	GA Code Ann. §33-23-46	Neither an insurance producer licensed as counselor nor any affiliate receiving any compensation from customer shall accept any compensation from an insurer or other third party for placement of insurance unless the producer has, prior to the customer's purchase of insurance, received documented acknowledgement of the compensation and has disclosed the amount or method for determining the amount. An insurance producer who is not licensed as a counselor may not receive any compensation from the customer for placement of insurance.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Hawaii	HI Rev. Stat. Ann. §485A-102	Definition: 2002. Exceptions: 2002.	None applicable.	
Idaho	ID Code §30-14-102 (15)	Definition: 2002. Exceptions: 2002.	ID Code §41-1030 (2)(a) ID Admin. Code 18.01.52.011.01	Before charging a fee to a consumer, a retail producer shall provide a written statement that describes the services the producer will perform and the fees the producer will receive.



State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Illinois	815 ILCS 5/2.11	Definition: 2002. Exceptions: 2002 with deviations.	215 ILCS 5/500-80 (e)	Insurance producer or business entity may charge fees separate from insurance commissions under certain conditions, including providing written disclosure of fee prior to delivery of policy. If combined compensation or fee exceeds 10% of a directly attributable premium amount of a corresponding contract or policy, the disclosure must also include the signature of the consumer or contracting party acknowledging the compensation.
Indiana	IN Code Ann. §23-19-1-2 (15)	Definition: 2002. Exceptions: 2002.	IL Admin. Code tit. 50 §930.70 (c)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Iowa	IA Code Ann. §502.102 (15)	Definition: 2002. Exceptions: 2002.	ID Code Ann. §27-1-15.6-22 ID Code Ann. §27-1-15.6-23 (c)  760 ID Admin. Code 1-24-6 (C)	Insurance producer may not receive compensation for the sale, solicitation, negotiation, or renewal of any insurance policy issued to any person or entity for whom the insurance producer, for a fee, acts as a consultant for that policy without written agreement and disclosure of compensation for sale of policy.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Kansas	KS Stat. Ann. §17-12a102 (15)	Definition: 2002. Exceptions: 2002.	IA Admin. Code 191-10.14 (4)	<b>An insurer or a producer may not charge an additional fee for services that are customarily associated with the sale, solicitation, negotiation and servicing of an insurance policy.</b>



Restrictions on Consulting Fees and Insurance Commissions	
State	Investment Advisers Definition & Exceptions
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Kentucky	<p><b>Investment Advisers Definition &amp; Exceptions</b></p> <p><b>Citation</b> KY Rev. Stat. Ann. §292.310 (11)</p> <p><b>Uniform Securities Act Version</b> Definition: 1956. Exceptions: 1956 with deviations and elements of 2002.</p>
Louisiana	<p><b>Investment Advisers Definition &amp; Exceptions</b></p> <p><b>Citation</b> LA Rev. Stat. Ann. §51:702 (7)</p> <p><b>Uniform Securities Act Version</b> Definition: 1956. Exceptions: 1956.</p>
Kentucky	<p><b>Restrictions on Consulting Fees and Insurance Commissions</b></p> <p><b>Citation</b> KY Rev. Stat. Ann. §304.9-350</p> <p><b>Comments</b> Consultant licensed as an agent cannot receive both a fee and other compensation paid from an insured or any insurer with respect to any insurance or annuity contract procured, renewed, continued, modified, terminated, or otherwise disposed of as result of any recommendation given or transaction engaged in by licensee. If consultant receives fee from insured with respect to insurance transaction or contract, it's presumed that licensee was acting as a consultant. Prior written contracts are required when consultants receive fees from insureds in certain circumstances.</p> <p><b>806 KY Admin. Regs. 12:170 (2)(a)</b> <b>An insurance producer shall not use a title or designation including financial planner, investment advisor, financial consultant, or financial counseling to imply that the insurance producer is engaged in an advisory or consulting business in which compensation is unrelated to sales. A person shall not charge an additional fee for services customarily associated with the solicitation, negotiation, or servicing of policies.</b></p>
Louisiana	<p><b>Restrictions on Consulting Fees and Insurance Commissions</b></p> <p><b>Citation</b> LA Rev. Stat. Ann. §22:1964 (19)</p> <p><b>Comments</b> Insurance producer shall not engage in the business of financial planning without disclosing prior to the execution of an agreement or solicitation of the sale of a product or service that he is also an insurance salesperson and that a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case. Producer shall not charge fees other than commissions for financial planning, unless such fees are based upon a written agreement, signed by the party to be charged in advance of the performance of the services under the agreement.</p>

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Maine	ME Rev. Stat. Ann. tit. 32 §16102 (15)	Definition: 2002. Exceptions: 2002.	ME Rev. Stat. Ann. tit 24-a §1466	Life and health consultant may charge a consulting fee and receive commissions for the sale of insurance as an insurance producer if both the consulting fee and the insurance commissions are provided for in a written agreement, in a form approved by the superintendent, signed by the client and the consultant.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Maryland	MD Code Corporations and Associations §11-101 (h)	Definition: similar to 2002. Exceptions: 2002 with deviations, including exception for insurance producer.	Code Me. R. 02-031 Ch. 240 §6 (C)  MD Code Ann. Insurance §10-208  MD Regs. Code 31.15.03.07 (E), (F), and (I)	An insurance adviser license does not authorize the licensee to receive compensation from an insurer or insurance producer for the sale or placement of insurance.  The terms financial planner, investment adviser, financial consultant, financial analyst, financial counsellor, and other similar terms may not be used by the producer in the name of the producer's agency, in letterheads, logos, or in advertising or solicitation material, or in any sales presentation soliciting insurance in such a way to imply that the agent's compensation is unrelated to insurance sales, unless this is actually the case. This provision does not preclude individuals who hold a formal recognized financial planning or consultant designation from using this designation even when they are selling insurance.  An insurance producer may not charge an additional fee for services that are customarily associated with the solicitation, negotiation, or servicing of policies.

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Massachusetts	MA Gen. Laws Ann. ch. 110A §401 (m)	Definition: 2002. Exceptions: elements of 2002 and 1956.	211 CMR 31.07 (3)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.
Michigan	MI Comp. Laws Ann. §451.2102a (e)	Definition: 2002 Exceptions: 2002 with additional exception.	MI Comp. Laws Ann. §500.1236	Counselor may receive a commission from the insurer on any insurance placed by the counselor acting as insurance agent if written agreement with certain disclosures is signed by client and counselor in advance of rendering service.
Minnesota	MN Stat. Ann. §80A.41 (16)	Definition: 2002. Exceptions: 2002.	MN Stat. Ann. §60K.46 (Subd. 2)	Insurance producers shall not charge a fee for any services rendered in connection with the solicitation, negotiation, or servicing of any insurance contract unless before rendering the services, a written statement is provided with certain disclosures.
Mississippi	MS Code Ann. §75-71-102 (15)	Definition: 2002 Exceptions: 2002	None applicable.	
Missouri	MO Ann. Stat. §409.1-102 (15)	Definition: 2002. Exceptions: 2002.	MO Ann. Stat. §375.116 (3)  MO Ann. Stat. §376.708 (3)	No insurance producer shall have right to compensation other than commissions unless the right to compensation is based upon a written agreement between the insurance producer and the insured specifying or clearly defining the amount or extent of the compensation.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Montana	MT Code Ann. §30-10-103 (11)	Definition: 2002. Exceptions: elements of 2002 and 1985 with exception for insurance company.	MT Code Ann. §33-17-512  MT Admin. R. 6.6.205 (3)	Licensed insurance consultant may not receive a commission, service fee, brokerage fee, or other valuable consideration for the sale or service of a line of insurance, annuity, security, or pension trust if the consultant has received compensation from the client for consulting services on the same line of insurance, annuity, security, or pension trust sold or serviced within the preceding 12 months.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Nebraska	NE Rev. Stat. Ann. §8-1101 (7)	Definition: 2002. Exceptions: similar to 2002 with elements of 1956 and additional exception.	NE Rev. Stat. Ann. §44-2631  210 NE ADC Ch. 33 §007 .03	Insurance consultant may not receive any part of any commission or compensation paid by an insurer or agent in connection with the sale or writing of any insurance which is within the subject matter of any consulting service performed prior to the sale of insurance and for which consultant has contracted to receive a fee.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. <b>An insurance producer may not charge an additional fee for services that are customarily associated with the solicitation, negotiation, or servicing of policies.</b>

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	Citation	Uniform Securities Act Version	Citation	Comments
Nevada	NV Rev. Stat. Ann. §90.250	Definition: 1985. Exceptions: 1985.	NV Admin. Code 686A.330 (3)  NV Admin. Code 686A.425 (3)	Financial planner, life or health insurance agent or broker, or insurance consultant shall not charge a fee except with respect to group life or group annuity, and group health products.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling may not be used in a way which implies that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless that is actually the case.
New Hampshire	NH Rev. Stat. Ann. §421-B:2 (IX)	Definition: 2002. Exceptions: Elements of 2002 and 1956 with exception for person transacting insurance.	NH Rev. Stat. Ann. §405:44-f  NH Code Admin. R. Ins 301.06 (c)	Insurance consultant shall provide to prospective clients a written disclosure statement with certain information including whether there are any sales fees and commissions which the insurance consultant may receive for recommending particular insurance products to clients.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
New Jersey	NJ Stat. Ann. §49:3-49 (g)	Definition: 2002. Exceptions: elements of 2002 and 1956 with deviations.	<p>NJ Admin. Code §11:17B-3.1</p> <p>NJ Admin. Code §11:17B-3.2 (c)</p> <p>NJ Admin. Code §11:4-11.4 (c)</p>	<p>Any insurance producer charging a fee to an insured or prospective insured shall first obtain a written, signed agreement containing certain information, including a statement as to whether a commission will be received from the purchase of insurance.</p> <p>No insurance producer may charge a service fee for services rendered in the sale or service of life or health insurance.</p> <p>An insurance producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case. Does not preclude persons who hold some form of formal recognized financial planning or consultant designation from using designation even when they are only selling insurance. Does not preclude persons who are members of a recognized trade or professional association, and having such terms as part of its name, from citing membership providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. Does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.</p>

Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
State	Citation	Uniform Securities Act Version	Citation
New Mexico	NM Stat. Ann. §58-13c-102 (P)	Definition: 2002. Exceptions: similar to 2002.	NM Stat. Ann. §59A-11A-7  NM Admin. Code 13.9.5 .12(C)
New York	NY Gen. Bus. §359-eee (1)(a)	Definition: 1956. Exceptions: elements of 1956 and 2002 with additional exception.	NM Bulletin 2014-015  NY Ins. §2119 (a)(1) and (b)(1)

**Comments**

No insurance consultant serving any person, firm, association, organization or corporation not engaged in the insurance business, for compensation paid by the person served, shall receive any part of any commission or compensation paid by any insurer or agent in connection with the sale of any insurance which is within the subject matter of any such service.

An insurance agent, broker or producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. Provision does not permit persons to charge an additional fee for services that are customarily associated with solicitation, negotiation or servicing of policies.

**Reminds persons that the Insurance Code prohibits any persons from performing consulting services in New Mexico unless licensed under the Code.**

No insurance agent, broker or consultant may receive any fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendations or giving advice with regard to any of the above, unless such compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of such compensation.

No insurance agent, broker or a consultant may receive any compensation as a result of the sale of insurance or annuities to, or the use of securities or trusts in connection with pensions for, any person to whom any such licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve months unless such compensation is provided for in the memorandum or contract required.

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
North Carolina	NC Gen. Stat. §78C-2 (1)	Definition: 2002. Exceptions: elements of 2002 with deviations, including additional exceptions.	NC Gen. Stat. §58-60-20 (c)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
North Dakota	ND Cent. Code §10-04-02 (10)	Definition: 2002. Exceptions: similar to 2002.	ND Admin. Code §45-02-02-10	Although licensed insurance producers are exempt from licensing as consultants and are specifically prohibited from concurrently holding a consultant's license, they may perform consulting services in the ordinary course of their businesses. However, if licensed insurance producers charge a fee, or receive any type of remuneration, for rendering such consulting service, they shall comply with the provisions and requirements of a consultant's agreement set forth in <a href="#">ND Admin. Code §45-02-02-09</a> .
Ohio	OH Rev. Code Ann. §1707.01 (X)	Definition: 1956. Exceptions: elements of 2002 with additional exceptions.	ND Admin. Code §45-04-01-05 (3)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Oklahoma	71 OK Stat. Ann. §1-102 (17)	Definition: 2002 Exceptions: 2002 without (E) and (G) exceptions of Act.	OH Admin. Code §3901-6-03 (G)(3)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
			36 OK Stat. Ann. §1435.30 (1)	A licensed insurance producer who acts as, or holds himself or herself out to be, an insurance consultant pursuant to the exemption from licensing as a consultant shall nonetheless be subject to the provisions of subsections C and H. However, nothing shall prohibit the offset of the fee payable pursuant to the provisions of subsection C by compensation otherwise payable to the insurance producer for acting as an insurance producer.



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	Citation	Uniform Securities Act Version	Citation	Comments
Oregon	OR Rev. Stat. §59.015 (20)	Definition: deviates from all Acts. Exceptions: elements of 1956 and 2002.	OR Rev. Stat. §744.091  OR Admin. R. 836-071-0260  OR Admin R. 836-071-0263	In certain circumstances, an insurer or insurance producer may charge a commission or service fee only if the insurer or insurance producer has a written agreement with the prospective insured prior to the binding or issuance of an insurance policy.  When an insurance producer or affiliate receives any compensation from a prospective insured for transacting insurance, neither the insurance producer nor the affiliate may accept any compensation from an insurer or other third party for the placement of insurance unless the insurance producer, prior to the prospective insured's purchase of insurance, has received documented acknowledgement of the compensation and has provided certain disclosures.  Neither insurance producer nor consultant may accept any compensation from an insurer or other third party for services provided to the prospective insured in addition to the compensation paid by the prospective insured unless the insurance producer or consultant, prior to the transaction, has received documented acknowledgement of the compensation and has provided certain disclosures.
Pennsylvania	70 PA Cons. Stat. Ann. §1-102 (j)	Definition: 1956. Exceptions: elements of all Acts.	OR Admin. R. 836-051-0020 (3)	Such terms as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually the case.  Producers holding financial planning or consultant designation may not charge additional fee for services that are customarily associated with solicitation, negotiation or servicing of policies.  Producers shall not engage in business of financial planning without certain disclosures, including, if appropriate, that a commission for sale of insurance will be received from insurer apart from financial planning fee. Written and signed agreement is required.

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Puerto Rico	None applicable.		PR ST T. 26 s 951g (7)	Insurance consultant may not also be an authorized agent or employee of any insurer or person who has economic or financial interest or contractual relationship in insurance field with authorized insurer or producer, except as policyholder.
Rhode Island	RI Gen. Laws §7-11-101 (11)	Definition: 1956. Exceptions: elements of all.	RI Gen. Laws §27-2.4-15.1  RI ADC 11-5-27:6 (C)	Where an insurance producer or affiliate receives compensation from the customer for initial placement of insurance, neither that producer nor the affiliate shall accept any compensation from an insurer or other third-party for that placement of insurance unless the producer has, prior to the customer's purchase of insurance, obtained documented acknowledgment of the compensation and provided the method of calculating the compensation.  Insurance producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling in such a way as to imply that the insurance agent is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. Persons are not permitted to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.
South Carolina	SC Code Ann. §35-1-102 (15)	Definition: 2002. Exceptions: 2002.	RI Bulletin 2006-2 (Amended)	Producers who receive compensation from the insured may not accept any form of compensation from the insurer unless the producer provides a description of the methods and factors utilized for calculating compensation from the insurer or other third party and the producer obtains the insured's documented acknowledgement that such compensation will be received.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. <b>Persons are not permitted to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.</b>

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	Citation	Uniform Securities Act Version	Citation	Comments
South Dakota	SD Codified Laws §47-31B-102 (15)	Definition: 2002. Exceptions: 2002.	SD Admin. 20:06:10:04.01 (2)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling may not be used to imply that the insurance agents are engaged in an advisory business in which their compensation is unrelated to sales unless that is actually the case.
Tennessee	TN Code Ann. §48-1-102 (10)  TN Bulletin 5-22-2013 May 22, 2013	Definition: 1956. Exceptions: similar to 1956.  Provides for definitions of and prohibited activities for an "insurance-only" person and "securities-only person" in terms of advice given to clients  Subsection VIII states that insurance advisers or investment representative as defined by TN Code Ann. §48-1-102 (10) and (11) may be subject to security rules which require them to adhere to fiduciary standard and additional disclosure rules.	Tenn. Comp. R. & Regs. 0780-01-40-.05 (3)	Terms such as financial planner, investment adviser, financial consultant, or financial counselling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually the case.

Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
State	Citation	Uniform Securities Act Version	Citation
Texas	TX Civ. St. Art. 581-4 (N)	Definition: 1956. Exceptions: 1956 with deviations, including additional exceptions and no exception (6) of Act.	TX Ins. Code Ann. §4005.004 (b)
Utah	UT Code Ann. §61-1-13 (1)(a)	Definition: 1956 Exceptions: 1956 and elements of 2002.	TX Ins. Code Ann. §4052.055
			UT Code Ann. §31a-23a-501 (3)
			UT Admin. Code R590-79 -6 (C)

**Comments**

If an agent or affiliate receives compensation from a customer for the placement or renewal of an insurance product, other than a service fee, an application fee, or an inspection fee, the agent or affiliate may not accept any compensation from an insurer or other third party for that placement or renewal unless the agent has, before the customer's purchase of insurance obtained documented acknowledgement that compensation will be received and provided information on how compensation is computed.

A life and health insurance counselor is not entitled to receive compensation for the same service provided to the same client if the counselor is licensed as a life, accident and health insurance agent and receives compensation for the service as an agent.

A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if producer and insured agree on compensation and producer has disclosed the existence and source of any other compensation that accrues to producer as result of transaction. Noncommission compensation includes compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of [UT Code Ann. §31a-23a-401](#); or other compensation arrangements approved by the commissioner.

Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used unless properly licensed if required or in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case and represented by way of required disclosure.

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	Citation	Uniform Securities Act Version	Citation	Comments
Vermont	VT Stat. Ann. tit 9 §5102 (15)	Definition: 2002. Exceptions: 2002.	VT Stat. Ann. tit. 8 §4724 (14)  VT Stat. Ann. tit. 8 §4802 (d)  VT Bulletin 22  VT Admin. Code 4-3-4:6. (C)	Included in definition of unfair methods of competition or unfair or deceptive acts or practices: Nondisclosure of fees or charges--Failure of agent or broker to obtain a prior written agreement concerning fees or charges made directly to the client or policyholder, for procuring, servicing, or providing advice on insurance contracts. Commissions, expense allowances, bonuses, fees, or any other compensation received directly by agents or brokers from any legal entity engaged in the insurance business are exempt.  No person may concurrently hold a consultant's license and an insurance producer's, surplus lines insurance broker's, or limited lines producer's license in any line.  Clarifies unfair or deceptive practices relating to identification or title of insurance producer.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Virginia	VA Code Ann. §13.1-501  21 VA Admin. Code 5-80-210	Definition: 2002. Exceptions: 2002 with deviations, including additional exceptions and no exception (G) of the Act.  Includes exception (G) of the 2002 Act. Also excludes persons in investment advisory business whose only client is, among others, an insurance company licensed to transact business and an employee benefit plan with assets of not less than \$5,000,000.	VA Code Ann. §38.2-1839	Licensed insurance consultant that sells, solicits or negotiates insurance as part of his services shall enter into a written contract with his client prior to the purchase of any insurance by that client specifying the amount and basis of consulting fee and the duration of employment. If the insurance consultant also receive commissions, incentives, bonuses, overrides, or any other form of remuneration as a result of his services for selling, soliciting, or negotiating insurance as a part of his services in addition to a consulting fee, unless otherwise prohibited, such information shall be disclosed in the contract.

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Washington	WA ST §21.20.005 (8)	Definition: 2002. Exceptions: elements of 2002 and 1956 with deviations.	WA ST §48.30.157  WA Admin. Code §284-23-240 (3)	Commissioner may permit an insurance producer to enter into arrangements with insureds to charge a reduced fee in situations where services that are charged for are provided beyond the scope of services customarily provided in connection with the solicitation and procurement of insurance.  Terms such as financial planner, investment adviser, financial consultant or financial counselor shall not be used by an agent unless the agent is generally engaged in an advisory business.
West Virginia	WV Code §32-4-401 (g)	Definition: 2002. Exceptions: elements of all.	WV C.S.R. §114-11-5 (5.14)	No insurance producer may use terms such as "financial planner," "investment adviser," "financial consultant" or "financial counseling" to imply that he or she is generally engaged in an advisory business in which compensation is unrelated to sales unless that actually is the case. Provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.
Wisconsin	WI Stat. Ann. §551.102 (15)	Definition: 2002 Exceptions: 2002 with additional exception.	WI Stat. Ann. §628.32  WI ADC Ins. 2.14 (5)(c)	Intermediary may not accept compensation from an insured or from both an insured and another source due to the insured's purchase of insurance or for advice regarding the insured's insurance needs or coverage unless the intermediary, before the insured incurs an obligation to pay compensation in writing discloses amount of compensation to be paid by the insured, excluding commissions paid by the insurer to the intermediary and if compensation will be paid by another source, the fact that the intermediary will also receive compensation from the other source.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance intermediary is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Wyoming	None applicable.		WY Stat. Ann. §26-9-220 (f)	An insurance producer who is also licensed as a consultant shall not act in the dual capacity of an insurance producer and a consultant in the same insurance transaction.



**A Comprehensive System of State Regulation Governs  
the Distribution of Insurance and Annuity Contracts**

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**A. State Insurance Regulation**

Through a network of statutes and regulations, state insurance departments heavily regulate the operations, products, and sales of life insurance companies. Life insurers and their salespersons must satisfy this regulatory structure in their state of domicile and every jurisdiction in which they distribute life insurance and annuities. Uniformity of regulation is accomplished throughout the states by means of model statutes and regulations promulgated by the National Association of Insurance Commissioners (the "NAIC"). Many of the insurance statutes and regulations promulgated and enforced by state insurance departments fulfill regulatory goals quite similar to those of the state securities administrators. The summary below highlights the broad scope and comprehensiveness of certain state insurance statutes and regulations. While only a small portion of the larger universe of state insurance regulation, this regulations are directly relevant in evaluating the market conduct structure governing insurance salespersons engaged in the delivery of financial planning and broker-dealer services. This discussion is intended to fill in other areas not covered in the preceding outline materials to this submission.

**B. Unfair Trade Practices**

Virtually every state has enacted a version of the NAIC Model Unfair Trade Fair Practices Act which was developed to regulate trade practices in the insurance business by defining and prohibiting practices that constitute unfair methods of competition or unfair deceptive acts or practices.<sup>3</sup>

A variety of the activities defined to be unfair trade practices directly parallel the purpose and scope of state securities codes. Section 4(A) involves misrepresentations and false advertising of insurance policies, and identifies unfair trade practices to include any estimate, illustration, circular or statement, sales misrepresentation, omission or comparison that misrepresents the benefits, advantages, conditions or terms of any policy, among other things.

Section 4(B) involves false information and advertising generally. This provision defines an unfair trade practice to include making, publishing or disseminating in a newspaper, magazine or other publication, on any radio/television station any assertion,

<sup>3</sup>This model statute governs items previously subject to Section 5 of The Federal Trade Commission Act. Congress observed that continued regulation of insurance by the states was in the public interest. See, legislative history of NAIC Unfair Trade Practices Act, NAIC Model Regulation Service at 880-20(1993).



representation or statement about an insurer or its business, which is untrue, deceptive or misleading.

Knowingly making any false statement of any material fact to insurance regulators, or in documents that will be publicly disseminated, is defined to be an unfair trade practice in Section 4(B) of the Model Unfair Trade Practices Act. This proscription is consistent with the truthfulness and accuracy of reports, records and representations required of Broker/Dealers by the NASD and the SEC under the federal securities laws.

Section 4(J) involves the failure to maintain marketing and performance records, and defines as an unfair trade practice the failure of an insurer to maintain its books, records, documents, and other business records in such an order that data regarding complaints, claims, reading, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year in the two preceding years must be maintained under this standard. This provision directly parallels the scope and purpose of NASD Conduct Rule 3110 regarding books and records.

Section 4(K) defines the failure of any insurer to maintain a complete record of all the complaints it received since the date of its last market conduct examination to be an unfair trade practice. The records of complaints must indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint and the time it took to process each.<sup>4</sup> For purposes of this subsection, the term “complaint” means any written communication primarily expressing a grievance.

Like state securities administrators, insurance commissioners have the power to examine and investigate the affairs of every insurer operating in the insurance department’s state “in order to determine whether such insurer has been or is engaged in any unfair trade practice prohibited by [the Unfair Trade Practices Act].”<sup>5</sup> Several provisions embellish this important authority.

For example, Section 7 of the Unfair Trade Practices Act gives insurance commissioners extensive authority to initiate hearings concerning unfair trade practices, to compel witnesses, appearances, production of books, and service of process. Section 7 sets forth detailed administrative and procedural practices, in order to assure due process and quasi-judicial formality.

Section 8 of the Unfair Trade Practices statute authorizes insurance commissioners finding insurers guilty of unfair trade practices to issue written findings and enforcement orders requiring the insurer to cease and desist from engaging in the act or practice. The insurance commissioner also has the discretionary authority to suspend and revoke

<sup>4</sup>The NAIC has also promulgated a Model Regulation for Complete Records to be maintained pursuant to Section 4(K) of the NAIC Unfair Trade Practices Act. See, NAIC Model Regulation Service at 844-1(1992). This regulation sets forth a complaint record form, content requirements, maintenance requirements, and standards concerning the format of complaint records.

<sup>5</sup> See Section 6, Power of Commissioner, Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-9(1993).

the insurer's license if the insurer knew or reasonably should have known that its conduct violated the Unfair Trade Practices Act, and to order penalties of \$1,000 for each violation up to an aggregate penalty of \$100,000, unless the violation was committed flagrantly in conscious disregard of the act, in which case the penalty may be up to \$25,000 for each violation to an aggregate total penalty of \$250,000. A similar monetary violation may be imposed under Section 11 for violations of cease and desist orders. The act also provides for judicial review of insurance commissioner orders and authorizes immunity from prosecution for witnesses who attend, testify or produce books, records or other paper correspondence.<sup>6</sup>

These significant powers that may be used by insurance commissioners to enforce violations of unfair trade practice proscriptions, together with the recordkeeping, reporting and inspection powers of the Act, provide a package of regulatory tools directly analogous to state securities codes, the NASD Rules of Conduct and SEC regulations governing market conduct practices and the prosecution of violations. In a sum, the unfair trade practice laws provide meaningful proscriptions that eliminate the need for duplicative regulation of variable contracts.

### **C. NAIC Model Fraud Laws and Fraud Legislation**

Enactment of state fraud statutes represents another significant insurance regulatory development. Recent market conduct issues have resulted in some insurance departments requiring insurer management to assume increased responsibility for supervision of sales activities. Other states have taken an approach similar to that of New York and Pennsylvania by requiring insurer review of market conduct compliance, thus placing direct responsibility at the corporate officer level. This widespread action dovetails with the objectives of the Federal Crime Control Statute and the Federal Sentencing guidelines, discussed below.

While states have taken different approaches to the issue, the majority of states addressing the fraud issue enacted legislation similar to the NAIC Model Fraud Laws.<sup>7</sup>

### **D. Market Conduct Examinations**

Nearly every jurisdiction has enacted a version of the NAIC Model Law on Examinations.<sup>8</sup> This Act is designed to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in each state and concerning individuals otherwise subject to the insurance commissioner's jurisdiction. The Act is intended to enable commissioners to adopt a flexible system of examinations and allocate resources deemed appropriate and necessary for the administration of the insurance laws of each state. The Model Law on Examinations sets forth standards for the conduct of

<sup>6</sup>See Sections 8, 9, 10, 11 and 14 of the Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-10 through 13(1994).

<sup>7</sup>See NAIC Insurance Fraud Prevention Model Act, NAIC Model Reporting Service at 680-1(1995).

<sup>8</sup>See NAIC Model Regulation Service at 390-1(1991).

examinations, commissioner authority, scope, and scheduling of examinations. It also details the scope of examination reports which shall be comprised of only facts appearing on books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined.<sup>9</sup>

Significantly, this Model Act dovetails with the NAIC Market Conduct Examiner's Handbook, an extremely detailed manual for examiners to assure that examiners follow comprehensive, uniform practices and procedures. The Examiner's Handbook is divided into seven different sections and contains 58 different standards. Among other things, the Examiner's Handbook addresses complaint handling, marketing and sales, producer licensing, and company operations/management.<sup>10</sup>

<sup>9</sup>See Sections 3, 4, and 5 of the Model Law on Examinations, NAIC Model Regulation Service at 390-5 (1991). Section 5 also sets forth detailed provisions for orders and administrative procedures in the conduct of hearing and adoption of a report on examination.

<sup>10</sup>Certain standards under the complaint handling section illuminate the depth and scope of the market conduct examination. Several standards are set forth below in this note as representative examples.

#### Complaint Handling-**Standard 2**

The company has adequate complaint handling procedures in place and communicates such procedures to policyholders.

##### **Review Procedures and Criteria**

Review manuals to verify complaint procedures exist. Procedures in place should be sufficient to require satisfactory handling of complaints received as well as internal procedures for analysis in areas developing complaints. There should be a method for distribution of and obtaining and recording response to complaints. This method should be sufficient to allow response within the time frame required by state law.

Company should provide a telephone number and address for consumer inquiries.

#### Complaint Handling-**Standard 3**

The company should take adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations and contract language.

##### **Review Procedures and Criteria**

Review complaints documentation to determine if the company response fully addresses the issues raise. If the company did not properly address/resolve the complaint, the examiner should ask company what corrective action it intends to take.

##### **Commentary:**

Reference to the examiner's general instructions on Handbook page VIII-14 (November 1995) reveals that an inquiry broader in scope than the mere resolution of a given complaint is expected. For example, the Handbook contains the following instructions: "The examiner should review the frequency of similar complaints and be aware of any pattern of specific type of complaints....Should the types of complaints generated be cause for unusual concern, specific measures should be instituted to investigate other areas of the company's operation."

#### Complaint Handling-**Standard 4**

Throughout most of 1995 and 1996, the NAIC significantly revised the Market Conduct Examiner's Handbook. The NAIC, together with industry input, sought to expand and enhance tools fostering the detection and prevention of marketplace abuse in the life insurance industry. Market conduct examinations are extremely comprehensive and serve as a means of positive reinforcement, by discouraging deficient practices that will be detected on examination, resulting in remedial action, and insurance department intervention.

### **E. Agents' Licensing and Testing**

The NAIC Agents and Brokers Licensing Model Act,<sup>11</sup> which appears virtually in every state, governs the qualifications and procedures for licensing insurance and annuity agents and brokers. This model law sets forth examination and licensing standards in great detail, and has a specific category for variable annuities and variable life insurance contracts. Licensed salespeople must be deemed by the insurance commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. Insurance brokers must also fulfill experience requirements. Section 8 of this regulation governs license denial, non-renewal and termination, giving the insurance commissioner broad discretion to suspend, revoke or refuse to issue or renew a license upon finding any of a variety of conditions including materially untrue statements, violation or noncompliance with insurance laws, withholding, misappropriating or converting customer moneys, conviction of a felony or misdemeanor involving moral turpitude, forgery, or cheating on licensing examinations, among other things.

### **F. Agent Investigation: Character and Background Investigation Requirements**

Most jurisdictions require that insurance producer license applicants be competent, trustworthy, and of good moral character in order to obtain a license. However, some now expressly require appointing insurers to certify that they have investigated the applicant's character and background and have found the applicant to be qualified and worthy of a license. Similar to FINRA, some jurisdictions implement fingerprinting as part of the background check. Related to these requirements is the portion of the NAIC Producer Licensing Model Act that allows the commissioner to refuse to issue an insurance producer's license if the commissioner finds that the individual has committed any act that is a ground for denial, suspension or revocation of the license. A law survey on this topic appears at the end of this segment of the appendix.

### **G. Continuing Education for Agents and Brokers**

In granting insurance agents and brokers licenses, most states also impose significant continuing education standards that parallel in objective and scope the continuing

The time frame within which the company responds is in accordance with applicable statutes, rules, and regulations.

#### **Review Procedures and Criteria**

Review complaints to ensure company is maintaining adequate documentation. Determine if the company response is timely. The examiner should refer to state laws for the required time frame.

<sup>11</sup> See NAIC Model Regulation Service at 210-1 (2008).

education standards recently developed by the securities industry together with the NASD. As in other areas seeking uniformity, the NAIC has promulgated the Agents and Brokers Licensing Model Act.<sup>12</sup> Under Section 5 of this model regulation, licensed agents must annually satisfy courses or programs of instruction approved by insurance commissioners in each state according to a minimum number of classroom hours, which typically is in the range of 25 class room hours per year for life and annuity salespersons. The courses include those presented by the Life Underwriter Training Council Life Course Curriculum, the American College's Chartered Life Underwriter and Chartered Financial Planner curriculum, and the Insurance Institute of America's programs in general insurance, for example. Like FINRA's initial and ongoing educational requirements for registered representatives, state insurance regulators understand that testing, licensing and demonstration of continued competence through continuing education is critically important in the distribution of insurance and annuity products. A law survey on this topic appears at the end of this segment of the appendix.

#### **H. Variable Contract Statutes**

Life insurance companies are authorized to issue separate accounts funding variable life insurance and annuity contracts upon fulfilling a variable contract statute in their domestic state, which typically follows the NAIC Model Variable Contract Law.<sup>13</sup> This NAIC model statute gives the insurance commissioner exclusive authority to regulate the issuance and sale of variable contracts and to issue rules and regulations appropriate to carry out the act's purpose. This model act and associated regulations that appear under state insurance law gives an additional, important measure of regulatory scrutiny and purchaser protection.

Collectively, the NAIC statutes and regulations provide a significant network of comprehensive regulation over many important aspects affecting the marketing and sale of variable contracts that closely reflect the purpose and scope of analogous concepts of securities regulation.

#### **I. Insurance Producer Database**

From a market conduct perspective, life insurers have committed to a single, industry-accessible national producer database to facilitate their ability to track pertinent information regarding licensed producers. Access to information having a bearing on the producer's background, qualifications and competency is a valuable tool to insurers in the employment/appointment screening process. Moreover, widespread availability of such information makes it more difficult for a producer with significant disciplinary history to continue illegal or unethical practices by "company jumping."

NIPR ([National Insurance Producer Registry](#)) is a non-profit affiliate of the National Association of Insurance Commissioners (NAIC). It was created in October 1996 to develop and operate a national repository for producer license information (PDB) and to establish a network to facilitate the electronic exchange of producer information.

<sup>12</sup>See NAIC Model Regulation Service at 215-1 (1990).

<sup>13</sup>See NAIC Model Regulation Service at 260-1 (1984).

The Producer Database (PDB) is an electronic database consisting of information relating to insurance agents and brokers (producers) accessible through the NIPR Gateway on a subscription basis through the Internet. Internet PDB links participating state regulatory licensing systems into one common system establishing a repository of producer information. Internet PDB also contains or references producer information from sources such as the Regulatory Information Retrieval System (RIRS) of the NAIC. Its development is based, in part, on the belief that the widespread availability of such information will make it more difficult for a producer with significant disciplinary history to continue illegal or unethical practices.

The NIPR Gateway is an electronic communication network that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information; including license applications, appointments, and terminations. To date, data standards have been developed for the exchange of appointment and not-for-cause termination information. All data flowing through the NIPR Gateway will conform to these standards.

Through Internet PDB, industry is able to access all public information related to a producer provided by participating states, including licensing, demographics and final regulatory actions. The product is designed to assist insurers in exercising due diligence in the monitoring of agents and brokers to reduce the incidence of fraud. Currently, Internet PDB contains information on over 2.9 million producers. Information available includes:

- Demographics-name, date of birth, addresses
- License Summary-state of license, license number, issue date, expiration date, license type/class, residency, lines of authority, status, status reason, status/reason effective date.
- Continuing Education-CE compliance indicator, CE renewal date, CE credits needed.
- Certificates and Clearance-date issued, issuing state, receiving state, certification or clearance indicator.
- Regulatory Actions-State of action, entity role, origin of action, reason for action, enter date penalty/fine/forfeiture, effective date, file reference, time/length of dates.
- Appointment Information-Effective date, termination date, reasons for termination.

Currently all 50 states, DC and PR participate in the PDB.

In many respects, this producer data base parallels the purpose and scope of FINRA's Central Records Depository or CRD. Through the NIPR data base, problem producers can be tracked and deterred from the insurance business.

## ACLI LAW SURVEY

### Free Look/Right To Return Requirements

#### What's New?

Substantive changes in the survey are highlighted in **bold** and may reflect:

- Amendments to existing laws and regulations;
- New laws, regulations and administrative material; or
- Expansion of the scope of the survey or additional information on the topic.

This multi-state survey identifies statutes and regulations that require insurers to inform policyholders of their right to receive a refund of monies paid after the return of first-issue or replacement life insurance policies, annuity contracts, long-term care insurance policies, and disability income insurance policies during a free look period. Additionally, the compilation lists the required location of the free look provision and specifies the time limitation for return of a contract by a policyholder after the contract is delivered. The survey also summarizes provisions governing the refund amount due to policyholders on return of the policy within the free look period. Note that product exemptions to the replacement requirements are not listed herein but are summarized in the ACLI's survey on [Replacement of Life Insurance and Annuities](#). Like other Law Surveys, this survey does not address case law or unpublished positions of state insurance departments.

ACLI hopes this compilation is helpful as a quick reference for your questions on free look provisions. This survey does not constitute a legal opinion or conclusion by ACLI, its staff, or its member companies and should not be used as the sole basis for making individual company decisions or conclusions. The Law Surveys are reviewed and updated annually.

**Note:** No live web links are available in this survey.



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
AL	AL Code §27-19-105 (f)	Long-term care policies		Prominently printed on 1st page or attached thereto	30 days	Premium
	AL Code §27-19-32	Individual disability insurance	Single premium nonrenewable policies or contracts	Notice printed on or attached to policy	10 days	Premium
	AL Admin. Code 482-1-113-.01 AL Admin. Code 482-1-113-.07 (3)	Accelerated benefit provisions of individual and group life insurance policies solicited by direct response	Any policy subject to long-term care insurance provisions	In a disclosure form provided when the policy is delivered	30 days	Premium
	AL Admin. Code 482-1-129-.03 AL Admin. Code 482-1-129-.05	Individual and group annuities	Registered/nonregistered variable annuities or other registered products; immediate and deferred annuities containing no nonguaranteed elements; annuities used to fund certain pension plans; nonqualified deferred compensation arrangements; structured settlement annuities; charitable gift annuities; and funding agreements		15 days, when Buyer's Guide and disclosure document are not provided at or before the time of application	Applicant may return contract "without penalty"
	AL Admin. Code 482-1-131-.03 AL Admin. Code 482-1-131-.05	Life insurance	Individual and group annuity contracts, credit life insurance, group life insurance, life insurance issued in connection with pension and welfare plans, or variable life insurance.	In policy	10 days, when the Buyer's Guide is not delivered prior to acceptance of the applicant's initial premium or premium deposit	"Unconditional refund"



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	AL Admin. Code 482-1-133-.02 AL Admin. Code 482-1-133-.06	Replacement of life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Appendix A or C	30 days	Premiums or considerations, including policy fees or charges or, in case of variable or market value adjustment policy or contract, payment of cash surrender value provided under policy plus fees and other charges deducted from gross premiums or considerations or imposed under such policy
AK	AK Stat. §21.45.020 AK Bulletin 2011-13	Life insurance and annuities delivered or issued for delivery on or after July 1, 2011	Group and pure endowments, single premium or term policies, annuity contracts or life insurance policies relating to health insurance benefits or additional benefits in the event of death by accident or accidental means	Prominently printed on 1st page or attached thereto	10 days (Note: Division encourages insurers to use a longer than the minimum 10-day free look period)	Refund of all moneys paid, except refund for variable life insurance policy or annuity contract must equal the sum of the difference between premiums paid, including any policy or contract fees or other charges; and amounts allocated to any separate accounts under the policy or contract
	AK Stat. §21.53.050 (a)	Long-term care policies		Prominently printed on 1st page or separately attached	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	AK Admin. Code tit. 3 §26.805 AK Bulletin 2011-13	Replacement of life insurance policies and annuities by insurers using producers	See ACLI's Replacement Law Survey for list of exemptions.	In the policy or contract	30 days	Premiums or considerations, including any fees or charges. For a variable or market value-adjusted life insurance policy or annuity contract, the cash surrender value plus the fees or other charges deducted from the gross premiums or considerations or otherwise imposed under the life insurance policy or annuity contract.
AZ	AZ Rev. Stat. Ann. §20-1233	Annuity contracts	Annuity contract supplemental to a settled annuity providing for payments in consideration of accumulations from the original contract and that is issued only to the original contract holders	Prominently printed on or attached to 1st page	10 days or 30 days if the contract holder is 65 or older on the date of the application	All monies paid; for variable annuities, sum of difference between premiums paid, including any policy or contract fees or other charges, and amounts allocated to separate accounts under policy or contract, and value of amounts allocated to separate accounts under policy or contract on date the returned policy is received by insurer or its producer

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	AZ Rev. Stat. Ann. §20-1242.01 AZ Rev. Stat. Ann. §20-1242.02	Group and individual annuities	Registered/nonregistered variable annuities or other registered products; immediate and deferred annuities containing no nonguaranteed elements; annuities used to fund certain pension plans; nonqualified deferred compensation arrangements; structured settlement annuities		15 days, when Buyer's Guide and disclosure document are not provided at time of application	Applicant may return contract "without penalty"
	AZ Rev. Stat. Ann. §20-1691.07	Long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
	AZ Admin. Code R20-6-501	Individual disability insurance	One where no provision for renewal is made	Printed on or attached to 1 <sup>st</sup> page or endorsed in a notice in a prominent style	10 days (or longer, at insurer's option)	Premium, policy fees and other charges paid
	AZ Admin. Code R20-6-209 (C)(1)	Life insurance	Annuities, credit life insurance, group life insurance, life insurance policies issued in connection with a pension or welfare plan, or variable life insurance	In policy or policy summary	10 days, when the Buyer's Guide and a Policy Summary are not delivered prior to acceptance of the applicant's initial premium or premium deposit.	Unconditional refund

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	AZ Rev. Stat. Ann. §20-1241.01 AZ Rev. Stat. Ann. §20-1241.03 AZ Rev. Stat. Ann. § 20-1241.05 (E)	Replacement of life insurance policies and annuity contracts	See ACLI's Replacement Law Survey for list of exemptions.	May be included in notice required under AZ Rev. Stat. Ann. §20-1241.03, subsections C and D  See also AZ Admin. Code R20-6-212 for reference to applicable NAIC model replacement notice form.	30 days	Premiums or consideration paid, including policy fees or charges or, in case of a variable or market value adjustment policy, payment of cash surrender value plus all fees and other charges deducted from gross premiums or considerations or imposed under policy
AR	AR Code Ann. §23-79-112 (f)	Individual life, annuity, and accident & health policies or contract filings	Variable life policies, variable annuities	Prominently printed on 1st page of policy or contract	At least 10 days unless policy or contract specifies a greater period	Premium
	AR Code Ann. §23-97-311	Long-term care policies		Prominently printed on or attached to 1 <sup>st</sup> page	30 days	Premium
	AR ADC 054.00.33-IV (Ark. Rule and Regulation 33, art. IV, Sec. 3(a)(5))	Variable life		Captioned provision on the cover page or pages corresponding to the cover page	10 days	To extent permitted by state law refund equals sum of (i) difference between premiums paid including policy fees or other charges and amounts allocated to separate accounts and (ii) the value of the amounts allocated to separate accounts on the date the return policy is received by insurer or its agent. Until state law authorizes this method, the amount of the refund shall be the total of all premium payments.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	AR ADC 054.00.60-8 (Ark. Rule and Regulation 60, Sec. 8(C)(b))	Accelerated benefit provisions in individual life insurance policies solicited by direct response methods	Long-term care insurance	In a disclosure form provided when the policy is delivered	10 days	Premium
CA	CA Ins. Code §10127.7	Individual life policies with a face value less than \$10,000 and any renewal	Individual life policies issued in connection with credit transactions or under contractual policy change or conversion privilege provision	Printed on or attached to policy	Not less than 10 nor more than 30 days	Premium and policy fee within 30 days from the date that the insurer is notified that insured has canceled the policy for all policies issued, amended, or delivered in this state on or after January 1, 2011, and applies to any renewal thereof. All policies subject to this section that are in effect on January 1, 2011, shall be construed to be in compliance with this section.
	CA Ins. Code §10127.9	Individual life insurance	Individual life policies subject to CA Ins. Code §10127.7 and those issued in connection with credit transactions or under contractual policy change or conversion privilege provision	Printed on or attached to policy	Not less than 10 nor more than 30 days	Premium and policy fee, but for variable annuities, variable life, and modified guaranteed contracts, the owner is entitled to a refund of account value and any policy fee paid. Refund must be made within 30 days from the date that the insurer is notified that the insured has canceled the policy.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	CA Ins. Code §10127.10	Individual life insurance policies or annuity contracts issued or delivered to senior citizen, 60 years or older	Individual life policies issued in connection with a credit transaction or under contractual policy change or conversion privilege provision, employer group annuity contracts and group term life insurance	On cover page or policy jacket in 12-point bold print with one-inch space on all sides or on sticker affixed to cover page or policy jacket	Not less than 30 days	Premium and policy fee for individual life and for variable contracts for which the owner did not direct that the premium be invested in mutual funds during the cancellation period. Account value refunded for variable annuities for which the owner directed the premium be invested in mutual funds during cancellation period. Refund must be within 30 days from the date that the insurer is notified that the insured has canceled the policy.
	CA Ins. Code §10295 CA Ins. Code §10295.3 CA Ins. Code §10295.8	Accelerated benefits policies, provision, endorsements or riders added to life insurance policies	Health, accident, or long-term care insurance	Prominently printed or attached to policy, certificate, rider or endorsement; for solicitation by direct response, disclosure form provided with application	30 days	Premium; if purchased as endorsement or rider at same time as base life insurance policy, then endorsement or rider may be returned within 30 days and underlying life insurance policy is otherwise subject to code.
	CA Ins. Code §10232.7	Long-term care policies or certificates	Group long-term care policies	Prominently printed on or attached to 1st page of policy or certificate	30 days	Premium and policy fee must be refunded within 30 days of receipt of returned policy.
	CA Ins. Code §10276	Individual accident and health policies or contracts	Single premium nonrenewable policies or contracts	Printed on or attached to policy or contract	Not less than 10 nor more than 30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	10 CCR §2522.8 (a)(3)(G)	Individual investment annuities		Printed on application	10 days	All annuity purchase contributions
	CA Ins. Code §10509.6 (d)	Replacement of life insurance policies and annuity contracts by insurers using agents	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	In policy or separate written notice delivered with policy	30 days	Premium and policy fee, but for variable annuities, variable life, and modified guaranteed contracts, the owner is entitled to a refund of account value and any policy fee paid. Refund must be made within 30 days from the date that the insurer is notified that the owner has canceled the policy.
CO	CO Rev. Stat. Ann. §10-7-302 (1)(g) CO Rev. Stat. Ann. §10-7-307	Life insurance policies	Reinsurance, group insurance, pure endowments, annuities or reversionary annuity contracts, certain term policies; policies which provide no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year exceeds 2-1/2% of the amount of insurance at the beginning of the same policy year; and policies shall delivered outside the state through an agent	Prominently printed on or attached to 1st page	15 days	Premium, but for variable life insurance the policyholder is entitled to a refund of the account value plus any policy fee or charge deducted from the policy.
	CO Rev. Stat. Ann. §10-19-111	Applicable to long-term care insurance applicants; notice requirements applicable to long-term care insurance policies and certificates		Prominently printed on or attached to 1st page	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	3 CO ADC INS 4-1-4, Sections 7(A)(4) and 3(B)	Replacement of life policies or annuity contracts by insurers that use producers	See ACLI's Replacement Law Survey for list of exemptions.	Notice may be included in Appendix A or C.	30 days	Premiums or considerations paid, including any policy fees or charges, but for variable or market value adjustment policy the owner is entitled to payment of the cash surrender value plus the fees and other charges deducted from the gross premiums.
	3 CO ADC INS 4-1-12, Section 5	All group and individual annuity contracts and certificates, including certain annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether or a pre-tax or after-tax basis	Registered or non-registered annuities or other registered products; immediate and deferred annuities that contain no non-guaranteed elements; annuities used to fund certain pension plans; structured settlement annuities, charitable gift annuities, and funding agreements		15 days where the Buyer's Guide and disclosure document are not provided at or before the time of application	
CT	CT Gen. Stat. Ann. §38a-436	Individual life policies		Printed on or attached to policy	10 days	Premiums
	CT ADC §38a-457-5 (c)(6)	Accelerated benefits policy with a rider providing for additional premium payments with an effective date subsequent to the effective date of the life insurance policy	Long-term care policies	Printed on or attached to policy	10 days	Not specified. Rider shall be void ab initio.
	CT ADC §38a-501-11 (g)	Individual long-term care insurance, including that issued pursuant to direct response solicitation		Prominently printed on or attached to 1st page	30 days	Premium



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	CT ADC §38a-433-4 (c)(1)(E) CT ADC §38a-433-2 (s) CT Bulletin PF-19 (June 11, 1990)	Individual variable life insurance policies		Captioned provision on cover page or pages corresponding to cover page of policy	10 days	To extent permitted by state law refund equals the sum of (i) difference between premiums paid including policy fees or other charges and amounts allocated to separate accounts and (ii) the value of the amounts allocated to separate accounts on date returned policy is received by insurer or its agent. Until state law authorizes this method, amount of refund shall be total of all premium payments.
	CT ADC §38a-505-10 (A)(7)	Individual accident and sickness policies	Single premium non-renewable policies	Prominently printed on or attached to 1 <sup>st</sup> page	10 days	Premium
	CT Bulletin PF-19 (June 11, 1990)	Individual fixed annuities and individual modified guaranteed life insurance			10 days	Premiums
	CT Bulletin PF-19 (June 11, 1990)	Individual variable annuities and individual modified guaranteed annuities			10 days	A) Total premiums if cancellation is made prior to actual delivery of contract; or B) An amount equal to the sum of (a) difference between premiums paid including any policy fees or other charges and amounts allocated to any separate accounts and (b) value of amounts allocated to any separate accounts, on the date the returned policy is received by the insurer or its agent

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	CT ADC §38a-435-5 (a)(4)	Replacement of life insurance and annuities by insurers that use producers	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	May be included in notice described in Appendix A or C	10 days	Premium/ consideration, including any policy fees/charges or, in the case of a variable or market value adjustment policy or contract, cash surrender value plus fees and charges
DE	DE ST TI 18 s7105 (f)	Long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
	18 DE ADC 1203	Life insurance	Annuities, credit life, group life, life insurance policies issued in conjunction with certain pension and welfare, variable life insurance under which death benefits and cash values vary in accordance with unit values of investments held in separate accounts	In policy or policy summary	10 days (If no unconditional refund provision/offer, Buyer's Guide and Policy Summary must be provided.)	Not specified
	18 DE ADC 1204-7.0 (7.4)	Replacement of life insurance and annuities by insurers that use agents or brokers	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	In policy or separate written notice delivered with policy	20 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
DC	DC Mun. Regs. tit. 26-A §2712 (a)(5)	Variable life insurance		Captioned provision on cover page or pages corresponding to cover page of policy	Either within 45 days of date of execution of the application or within 10 days of receipt of policy by policyholder, whichever is later	Premium
	DC Code Ann. §31-3605 (d)(2)	Long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
FL	FL Stat. Ann §626.99 (4)(a)	Life insurance policies	Annuities, credit life, group life, life insurance policies issued in conjunction with certain pension and welfare plans, variable life insurance under which death benefits and cash values vary in accordance with unit values of investments held in separate accounts	In policy or policy summary	14 days (If no unconditional refund provision/offer, Buyer's Guide and a Policy Summary must be provided.)	"Unconditional refund"
	FL Stat. Ann §626.99 (4)(b) and (c)	Fixed and variable annuities		<b>Cover page of contract</b>	<b>21 days</b>	"Unconditional refund" <b>Fixed annuities- Premiums, contract fees and charges;</b> <b>Variable annuities - cash surrender value, plus fees and charges or premiums paid</b>
	FL Stat. Ann §627.9407 (8) <b>69 FL Admin. Code Ann. 69O-157.018 Repealed. Effective Jan. 28, 2013.</b>	Individual long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	69 FL Admin. Code Ann. 690-154.003	Individual disability insurance policies	Single premium non-renewable policies or contracts or travel accident policies or contracts	Notice in a prominent place printed or stamped on or attached to policy	10 days	Premium
	69 FL Admin. Code Ann. 690-151.003 69 FL Admin. Code Ann. 690-151.004 69 FL Admin. Code Ann. 690-151.007 (3)(d)	Replacement of life insurance and annuities, including tax sheltered annuities and life insurance that qualifies as tax sheltered annuity	See ACLI's Replacement Law Survey for list of exemptions.		10 days (If no unconditional refund provision/offer, Buyer's Guide and a Policy Summary must be provided.)	"Unconditional refund"
GA	GA Code Ann. §33-25-8	Individual life policies	Individual life policies issued in connection with a credit transaction	Printed on or attached to contract	10 days	Premium
	GA Code Ann. §33-26-4	Industrial life policies		Printed on or attached to contract	10 days	Premium
	GA Code Ann. §33-28-6 (a)	Annuities, reversionary annuities, pure endowment contracts	Group annuity contracts	Printed on or attached to contract	10 days	Premium
	GA Code Ann. §33-42-6 (f)	Individual long-term care policies, including direct response solicitation		Prominently printed on or attached to 1st page	30 days	Premium
	GA Code Ann. §33-29-11	Individual accident and sickness policies	Single premium nonrenewable policies or contracts	Printed on or attached to policy or contract	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	GA Comp. R. & Regs. 120-2-73-.02 GA Comp. R. & Regs. 120-2-73-.05	Individual deferred annuities and group annuities and deposit funds (i.e. arrangements under which amounts to accumulate at interest are paid in addition to life insurance premiums or annuity considerations under provisions of individual life insurance policies or annuity contracts)	1. Individual deferred annuities and group annuities which are: (i) variable annuities; (ii) registered with the Federal SEC; (iii) contracts with variable annuity features available at option of contract owner; 2. group annuity contracts whose cost is borne in whole or in part by the annuitant's employer or association; 3. immediate annuity contracts; 4. policies issued in connection with certain pension plans; 5. individual retirement accounts and Sec. 408 individual retirement annuities; 6. a single advance payment of specific premiums equal to the discounted value of such premiums; and 7. certain policyholder deposit accounts.	In policy or contract or in contract summary	10 days (if no unconditional refund provision/offer, Buyer's Guide and a Policy Summary must be provided prior to accepting initial annuity consideration.)	"Unconditional refund"
	GA Comp. R. & Regs. 120-2-24-.08 Exhibit A; GA Comp. R. & Regs. 120-2-24-.04, GA Comp. R. & Regs. 120-2-24-.07	Replacement of life insurance	See ACLI's Replacement Law Survey for list of exemptions.	In Replacement Notice (Exhibit A)	Not specified	Not specified
HI	HI Rev. Stat. Ann. §431:10-214	Individual life policies, individual accident and health or sickness policies	Single premium nonrenewable policies or travel accident policies	Printed on or attached to policy in 10-point bold type	10 days	Premium, but insurer may be reimbursed for actual medical examination expenses incurred in processing policy, provided notice includes such statement.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	HI Rev. Stat. Ann. §431:10D-603	Annuities	Solicitation for an annuity contract provided in other than a personal meeting		15 days, when Buyer's Guide and disclosure document are not provided at or before the time of application	Applicant may return contract without penalty
	HI Rev. Stat. Ann. §431:10D-603 (b)	Solicitation for an annuity contract provided in other than a personal meeting		Solicitation must include statement that prospective applicant may contact the insurance division for a free buyer's guide	Not specified	Not specified
	HI Rev. Stat. Ann. §431:10H-111	Long-term care policies	Group long-term care policies issued to employer or labor organization	Prominently printed on or attached to 1st page	30 days	Premium
	HI Rev. Stat. Ann. §431:10D-501 HI Rev. Stat. Ann. §431:10D-505 (a)(4)	Replacement of life insurance and annuities by insurers that use producers	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	In policy or contract owner notice	30 days	Premium/consideration, including policy fees/charges, or, in case of variable or market value adjustment policy, cash surrender value plus all fees and charges deducted from the gross premiums or considerations; provided that such notice may be included in forms approved by the commissioner

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
ID	ID Code §41-1935 (1) ID Code §41-1901	Life insurance policies and annuity contracts	Group life insurance; group annuities; reinsurance	In policy or contract under appropriate caption and if not so printed on face page of policy, printed or stamped conspicuously on face page	20 days	Premium
	ID Code §41-4605 (6) ID Code §41-4603 (4)(a)	Long-term care policies, including those issued pursuant to direct response solicitation	Long-term care certificate issued to specified employer groups defined in § 41-4603(4)(a)	Prominently printed on or attached to 1st page	30 days	Premium
	ID Code §41-2138	Individual health insurance policies	Nonrenewable accident policies and individual credit health insurance policies	Captioned in policy or separate rider attached to policy when delivered, or notice of provision printed or stamped on face page	10 days	Premium
	ID Admin. Code 18.01.41.014	Replacement of life and annuities by insurers that use agents or brokers	See ACLI's Replacement Law Survey for list of exemptions.	In policy or in separate written notice delivered with policy	20 days	Premium
IL	215 ILCS 5/224 (1)(n)	Individual life insurance	Director may by rule exempt specific types of policies	Provision or notice attached to policy	10 days	Premium and policy fees
	215 ILCS 5/229 (1)(m)	Industrial life insurance	Director may by rule exempt specific types of policies	Provision or notice attached to policy	10 days	Premium and policy fees
	215 ILCS 5/351A-7	Individual long-term care policies, including direct response		Prominently printed on or attached to 1st page	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	215 ILCS 5/226 (1)(h)	Annuities and pure endowment contracts	Reversionary annuities, survivorship annuities, or annuities contracted by employer on behalf of his employees	Provision or notice attached to contract	10 days	Premium, including contract fees or charges. For a variable annuity, a refund equal to sum of (i) difference between premiums paid including contract fees or other services and amounts allocated to separate accounts and (ii) cash value or, if contract does not have cash value, the reserve for contract, on date return contract is received by insurer or agent
	215 ILCS 5/355a (5)(a)	Individual accident and health insurance policies	Single premium nonrenewal policies	Notice prominently printed on first page or attached to policy	10 days	Premium
	215 ILCS 5/224 (2)	Replacement of life insurance	Industrial life, group life, annuities, pure endowments, reinsurance	In policy or separate notice delivered with policy	20 days	Premium
IN	IN Code Ann. §27-1-12-43	Individual life insurance and individual variable life insurance	Credit life insurance	Prominently printed on 1st page	10 days	All money paid by the policyholder
	IN Code Ann. §27-1-12.6-5	Annuity contracts	Contracts issued in connection with a pension, annuity, or qualifying profit-sharing plan, if participation is a condition of employment	Conspicuously placed on face page of the contract	10 days	Value of variable annuity account or the monies paid by the purchaser to a fixed account in connection with the issuance of the contract
	IN Code Ann. §27-8-12-12	Individual long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	IN Code Ann. §27-8-12-13	Long-term care policy or certificate issued pursuant to direct response solicitation		Printed on or attached to 1st page	30 days	Premium
	IN Code Ann. §27-8-5-20 (a)	Individual accident and health insurance policies	Direct response policies	Prominently printed on 1st page	10 days	Premium
	IN Code Ann. §27-8-5-20 (b)	Direct response accident and health insurance policies		Prominently printed on 1st page	30 days	Premium
	760 IN Admin. Code 1-16.1-4 760 IN Admin Code 1-16.1-6	Replacement policies	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	In policy or separate written notice delivered with policy	20 days	Premium
IA	IA Code Ann. §514G.105 (4)	Individual long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
	IA Code Ann. §514A.3 (1)(m)	Individual sickness and accident insurance policies		Prominently printed on or attached to 1 <sup>st</sup> page	10 days	Premium
	IA Admin. Code 191-15.9 (507B)	Individual life insurance or annuity			10 days	Premium but if transaction involved a variable product, amount to be refunded shall be determined according to policy language.
	IA Admin. Code 191-15.62 (507B) IA Admin. Code 191-15.64 (507B) (3)	Group and individual annuities	Registered or nonregistered variable annuities or other registered products; immediate and deferred annuities that contain no nonguaranteed elements; annuities used to fund certain pension plans; structured settlement annuities; and charitable gift annuities		15 days, when Buyers Guide and disclosure document are not provided at or before time of application	Annuity can be returned "without penalty."

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	IA Admin. Code 191-33.4(508A)(3)(a)(5)	Variable life insurance		Captioned provision on cover page or pages corresponding to cover page of policy	10 days	Refund equal to the sum of: 1) difference between premiums paid including any policy fees or other charges and amounts allocated to separate accounts; and 2) value of amounts allocated to separate accounts, on the date returned policy is received by insurer or agent
	IA Admin. Code 191-16.26(507B)(1)(d)	Replacement life insurance and annuities by insurers that use producers	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Appendix A or C	30 days	Premium/consideration, including policy fees or charges or, in the case of a variable or market value adjustment policy, payment of the cash surrender value provided plus the fees and charges deducted from the gross premiums or considerations or imposed under such policy or contract

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
KS	KS Admin. Regs. 40-2-15	Individual life policies and annuity contracts		Printed on or attached to 1st page of policy in not less than 10-point bold print or in some distinguishable manner from other policy print	10 days	Premium, but for variable life insurance and annuities, a refund equal to sum of: (i) difference between premiums paid, including policy fees or other charges and amounts allocated to separate accounts; and (ii) value of amounts allocated to separate accounts on date returned policy is received by insurer or its agent
	KS Admin. Regs. 40-4-22	Individual accident and health insurance	Travel accident policies	Notice shall be printed on or attached to 1 <sup>st</sup> page of policy in not less than 10 point type and in bold face type or in some other manner that distinguishes it from the print otherwise appearing in the policy	10 days	Premium
	KS Admin. Regs. 40-4-37f (b)	Long-term care policies or certificates		Notice printed on or attached to 1st page in bold face type or other manner distinguishing it from other print	30 days	Premium refunded within 10 business days following receipt of returned policy by insurer or its agent

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	KS Admin. Regs. 40-2-12 (f)(4)(A)	Replacement of life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	In policy or separate written notice	20 days	Premium, except as provided in KS Admin. Regs. 40-2-15 with respect to adjustments necessary to reflect investment risk on variable annuity contracts and variable life insurance policies
KY	KY Rev. Stat. Ann. §304.15-010 KY Rev. Stat. Ann. §304.15-040 KY Rev. Stat. Ann. §304.15-050 (2)	Life insurance and annuity contracts	Reinsurance, group life insurance, group annuities, credit life, and policies issued under tax qualified pension plans	In policy	10 days	Premium
	KY Rev. Stat. Ann. §304.14-615 (6)	Long-term care policies	Group long-term care policies as defined in KY Rev. Stat. Ann. §304.14-600 (5)(a)	Prominently printed on or attached to 1st page	30 days	Premium
	KY Rev. Stat. Ann. §304.17-170	Individual health insurance policies	Nonrenewable accident policies	Printed on face page or filing back of policy or in separate rider attached to policy when delivered; or notice of provision printed or stamped on face page or filing back	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	806 KY Admin. Regs. 15:030, Section 3(3)(a)(5)	Variable life insurance		Captioned provision on cover page or pages corresponding to cover page of each policy	10 days	To the extent permitted by state law, refund equals sum of (i) difference between premiums paid including policy fees or other charges and amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.
	KY Rev. Stat. Ann. §304.12-030 806 KY Admin. Regs. 12:080, Section 5(1)(d)	Replacement of life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	Replacing insurer must agree in writing with insured.	30 days	Premiums or considerations paid, including any policy fees or charges, or in the case of a variable or market adjustment policy or contract, a payment of cash surrender value plus fees and other charges deducted from gross premiums or considerations or imposed under policy or contract
LA	LA Rev. Stat. Ann. §22:931 (A)(10) and (C)	Individual life insurance policies	Trip travel insurance policies which by their terms are not renewable, industrial life policies, group life policies, service insurance	Prominently printed on or attached to life policies	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	LA Rev. Stat. Ann. §22:951 (A)(8)(a)	Annuities or pure endowment contracts	Survivorship annuities, or group annuity contracts, charitable gift annuities	Prominently printed on or attached thereto	10 days	Premium
	LA Rev. Stat. Ann. §22:973 (7)(a)	Individual health insurance if such policy was solicited by deceptive advertising or negotiated by deceptive, misleading, or untrue statements of insurer or any agent on behalf of insurer	Travel insurance policies	Prominently printed on or attached to policy	10 days	Premium
	LA Rev. Stat. Ann. §22:1186 (F)	Long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
	LA Admin. Code 37:XIII.8305 (A)(3)(a)(i)(e)	Variable life insurance		Captioned provision	10 days	To extent permitted by state law, refund equals sum of: (i) difference between premiums paid including policy fees or other charges and amounts allocated to separate accounts; and (ii) value of amounts allocated to separate accounts, on date the returned policy is received by insurer or its agent. Until state law authorizes this method, the amount of refund is the premium.

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	LA Admin. Code 37:XIII.8905, LA Admin. Code 37:XIII.8911 A(5)	Replacement of life insurance and annuities by insurers that use producers	See ACLI's Replacement Law Survey for list of exemptions.	Notice may be included in Appendix A or C.	30 days	Premiums or considerations, including policy fees or charges, or for variable or market adjustment policy a payment of: (i) the cash surrender value; and (ii) the fees and charges deducted from the gross premiums or considerations or imposed under the policy.
ME	ME Rev. Stat. Ann. tit. 24-A §2515-A	Individual life insurance policies		In policy or in separate rider attached thereto; provision set forth in policy under appropriate caption and, if not printed on face of policy, adequate notice stamped or printed conspicuously on face page	10 days	Premium
	ME Rev. Stat. Ann. tit. 24-A §2717	Individual health insurance policies	Nonrenewable accident policies and individual credit health insurance policies	In policy or in separate rider attached thereto; provision set forth in policy under appropriate caption and, if not printed on face of policy, adequate notice stamped or printed conspicuously on face page	10 days	Premium
	ME Rev. Stat. Ann. tit. 24-A §5075 (4)	Long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	Code ME R. 02-031 Ch. 915 §3 Code ME R. 02-031 Ch. 915 §5 (A) (3)	Individual and group annuities	Registered or non-registered annuities or other registered products; immediate and deferred annuities that contain no nonguaranteed elements; annuities used to fund certain pension plans; structured settlement annuities; and funding agreements.	A prominent notice of the free look period shall be provided to the applicant.	15 days, when Buyer's Guide and disclosure document are not provided at or before time of application	Return of annuity contract "without penalty"
	Code ME R. 02-031 Ch. 919 §1 (C) Code ME R. 02-031 Ch. 919 §5 (A) (4)	Replacement of life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	Notice may be included in Appendix A or C.	30 days	Premiums or considerations paid, including policy fees or charges or, in case of variable or market value adjustment policy or contract, payment of cash surrender value plus fees and other charges deducted from gross premiums or considerations or imposed under policy or contract
MD	MD Code Ann. Insurance §16-101 MD Code Ann. Insurance §16-105 (b)	Life insurance policies and annuity contracts	Reinsurance, group life insurance, group annuities, contracts issued to an employee in connection with the funding of a pension annuity, certain retirement plans or profit-sharing plan if participation is a condition or employment	Attached to or prominently printed on face of policy or contract	10 days	Pro rata premium for the unexpired term of the policy or annuity contract
	MD Code Ann. Insurance §15-201 (h)	Individual health insurance policies		Prominently printed on or attached to face of policy	10 days	Pro rata premium for unexpired term



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	MD Code Ann. Insurance §18-119	Long-term care policies	Plans under § 125 of the Internal Revenue Code (cafeteria plans)	In policy	30 days	Premiums paid, all moneys to be refunded within 30 business days after receipt of notice of surrender
	MD Regs. Code 31.09.02.04 (D)(1)(e)	Variable life insurance		Captioned provision on cover page or pages corresponding to cover page	45 days on date of execution of application; or within 10 days of receipt by policyholder, whichever is later	Premium
	MD Regs. Code 31.14.01.04 (J)	Long-term care policies	Employer-employee group policies, cafeteria plan issued under § 125 of the Internal Revenue Code	Prominently printed on 1st page of policy	30 days	Premium
	MD Regs. Code 31.15.04.03 MD Regs. Code 31.15.04.05	Individual deferred annuities or deposit funds accepted in conjunction with individual life insurance policies or with annuity contracts that are subject to chapter	Certain employer-paid group annuity contracts; variable annuities, investment annuities; Immediate annuity contracts; a single advance payment of specific premiums equal to the discounted value of these premiums; a policyholder's deposit account established primarily to facilitate payment of regular premiums	In contract or policy or in contract summary	10 days, when contract summary is not provided before accepting applicant's initial consideration for annuity contract	"Unconditional refund"

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	MD Regs. Code 31.09.05.02 (B) MD Regs. Code 31.09.05.06 (A)(5)	Replacement of life insurance and annuities by insurers using producers	See ACLI's Replacement Law Survey for list of exemptions.	In notice to owner of policy or contract	30 days	Premiums or considerations, including policy fees or charges, but for variable life insurance policy or variable annuity contract, a payment of: (i) cash surrender value; and (ii) fees and charges deducted from gross premiums or considerations or imposed under the variable life insurance policy or variable annuity contract, including surrender charges
MA	MA Gen. Laws Ann. ch. 175 §187H	Individual life policies with face amount less than \$25,000		Printed on or attached to policy	10 days	Premium
	211 CMR 42.05 (1)(e)	Individual accident and sickness policies		Not specified	10 days	Not specified
	211 CMR 95.08 (1)(g)	Variable life insurance policies		Captioned on cover page	10 days	Premium
	211 CMR 34.06 (1)(d)	Replacement of life insurance and annuities by insurers using agents or brokers	See ACLI's Replacement Law Survey for list of exemptions.	In policy or in separate written notice delivered with policy	20 days	Premium
MI	MI Comp. Laws Ann. §500.4000 (1) and (2) MI Comp. Laws Ann. §500.4015	Individual life insurance	Group insurance, reinsurance, industrial life policies, annuities	Contained in policy on front page, printed or stamped and made a permanent part of policy	10 days	Premium, including policy fees or charges

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	MI Comp. Laws Ann. §500.4073	Annuity contracts	Policies or contracts issued to an employee in connection with the funding of a pension, annuity, or qualified profit-sharing plan if participation is condition of employment	Contained in policy on front page, printed or stamped and made a permanent part of policy	10 days	Premium, including policy fees or charges
	MI Comp. Laws Ann. §500.3409 (1)	Disability insurance	Group and blanket	Contained in policy on front page, printed or stamped and made a permanent part of policy	10 days	Premium, including policy fees or charges but if cancelled after the 10-day period, a pro rata share of the premium is refunded
	MI Comp. Laws Ann. §500.3409 (2) MI Bulletin 92-01	Individual and group disability insurance for people eligible for Medicare		Printed or stamped on front page and made a permanent part of policy	30 days	Premium, including policy fees or charges but if cancelled after the 30-day period, a pro rata share of the premium is refunded
	MI Comp. Laws Ann. §500.3943	Long-term care insurance, including direct response		Prominently printed on 1st page and in summary of coverage	30 days	Premium
	MI Admin. Code 500.850 (a)(iv)	Variable life insurance		Captioned provision on the cover page or pages corresponding to the cover page	Within 45 days of the execution of the application or within 10 days of receipt, whichever is later	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MN	MN Stat. Ann. §60A.06 (4) MN Stat. Ann. §72A.51 (Subdivision 3) MN Stat. Ann. §72A.52	Life and endowment insurance; annuities; and, in such contracts, or in contracts supplemental thereto, additional benefits in event of death of the insured by accidental means, total permanent disability of the insured, or specific dismemberment or disablement suffered by the insured, or acceleration of life or endowment or annuity benefits in advance of the time they would otherwise be payable		Include a notice, clearly and conspicuously in minimum 10-point bold face type in contract and it must include certain elements listed in MN Stat. Ann. §72A.52	A minimum of 10 days; a minimum of 30 days if the policy is a replacement policy. (See MN Bulletin 2007-2 for explanation of inconsistencies between replacement policy provisions in MN Stat. Ann. §72A.52 and MN Stat. Ann. §61A.57.)	Premium, but for variable annuity, a refund equal to sum of (i) difference between premiums including contract fees or other charges and amounts allocated to separate accounts and (ii) cash value, or, if no cash value, reserve for the contract, on date returned contract is received by insurer or its agent.
	MN Stat. Ann. §62A.50 (Subdivision 2)	Long-term care policies on nongroup basis, including direct response		Prominently printed on 1st page	30 days	Premium
	Minn. R. 2750.1300 (A) (5)	Variable life insurance		Captioned provision on cover page or pages corresponding to cover page	10 days	Refund as required by state law (see MN Stat. Ann. §72A.51)
	MN Stat. Ann. §61A.53 MN Stat. Ann. §61A.54 MN Stat. Ann. §61A.57 (d)	Replacement of life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	In policy or contract or in a separate written notice delivered with policy or contract	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
MS	MS Code Ann. §83-7-51	Individual life insurance [Note that the classification of a life insurance company in MS Code Ann. §83-19-1 includes the definition of an insurance contract as one for the "payment of endowments or annuities." ]		Printed on or attached to policy	10 days	Premium
	MS Code Ann. §83-9-25	Individual accident and health policy or service contract	Travel and nonrenewable accident policies	Printed on or attached to policy	10 days	Premium
	MS ADC INS 84-101 <b>Rule 5.05 (C)(1)(e)</b>	Variable life insurance		Captioned provision on cover page or pages corresponding to cover page of policy	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.
	MS ADC INS LA&H 90-102 <b>Rule 8.06 (D)</b>	Long-term care		Prominently printed on or attached to 1st page	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	MS ADC INS 99-2 <b>Rule 14.01 and 14.05 (A) (4)</b>	Replacement of life insurance and annuities that use producers, including those issued pursuant to direct response solicitation	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Appendix A.	30 days	Premium/consideration, including any policy fees or charges or, in case of variable or market value adjustment policy or contract, payment of cash surrender value plus fees and other charges deducted from gross premiums or considerations or imposed under policy
MO	MO Ann. Stat. §376.706 (1) MO Ann. Stat. §376.702	Life insurance	Annuities, credit life insurance, group life insurance policies issued in connection with pension and welfare plans as defined by and subject to ERISA, variable life insurance where death benefits and cash values vary in accordance with unit values of investments held in a separate account	In policy or policy summary	At least 10 days (If no unconditional refund provision/offer the insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary prior to accepting applicant's premium or premium deposit.)	Premium
	MO Ann. Stat. §376.1109 (11)	Long-term care policies	Certain employer group long-term care policies as defined in MO Ann. Stat. §376.1100 (2)(4)(a)	Prominently printed on or attached to 1st page	30 days	Premium
	20 MO Code Regs. 400-1.010 (1)(D)	Individual life insurance and annuities and all mass marketed or individually solicited group life insurance or annuity certificates for which the insured pays the entire premium	Group policies; life policies issued to college students; single premium short duration travel coverage; certain graded benefit life policies	In policy	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	20 MO Code Regs. 400-1.030 (3)(C)(1)(E)	Variable life insurance		Captioned on cover page	10 days	To the extent permitted by state law, the refund equals the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent. Until state law authorizes this method, the amount of the refund is the premium.
	20 MO Code Regs. 400-2.010	Individual accident and sickness policies and group accident and sickness certificates that are mass marketed or marketed on individual basis	Single premium short-duration trip or travel type coverage	Conspicuously and clearly captioned on face page of policy or contract	10 days	Premium
	20 MO Code Regs. 400-5.400 (4) and (7)(D)	Replacement of life insurance or annuities by insurers that use producers	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	In policy or in separate written notice delivered with policy	20 days	Premium
MT	MT Code Ann. §33-15-415	Individual life or disability policies	Single premium nonrenewable disability policies	In policy	10 days	Premium
	MT Code Ann. §33-22-1119	Individual long-term care policies, including direct response		Prominently printed on or attached to 1st page	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	MT Admin. R. 6.6.803 MT Admin. R. 6.6.805 (1)(b)	Annuities	Registered or non-registered annuities or other registered contracts; immediate and deferred annuities that contain no non-guaranteed elements; annuities used to fund certain pension plans; structured settlement annuities; charitable gift annuities; and funding agreements		15 days, when a buyer's guide and disclosure document are not provided at or before the time of application	Return of contract "without penalty"
	MT Admin. R. 6.6.304 MT Admin. R. 6.6.306 (1)(d)	Replacement of life insurance policies and annuities	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	May be included in Appendix A or C	30 days	Premium/consideration, including policy fees or charges or, in case of variable or market value adjustment policy or contract, payment of cash surrender value or contract plus fees and other charges deducted from gross premiums or considerations or imposed under policy
NE	NE Rev. St. §44-502.05	Individual life insurance and annuities	Credit life policies	In policy or printed on face	10 days	Premium
	NE Rev. St. §44-4515	Long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
	NE Rev. St. §44-710.18	Individual sickness and accident insurance policies	Single-premium nonrenewable policies	Printed on face or attached to policy	10 days	Premium



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	210 NE ADC Ch. 19 §003 210 NE ADC Ch. 19 §009 009.01D	Replacement of life insurance and annuities by insurers that use producers	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Appendix A or C	30 days	Premiums or considerations paid, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed
NV	NV ST §688A.010 NV ST §688A.165	Life insurance, pure endowment contracts and annuities	Reinsurance, group life insurance, group annuities, and industrial life insurance	In contract or policy, or notice attached to contract or policy	10 days	Premium, including contract or policy fees or charges
	NV Admin. Code 686A.415 NV Admin. Code 686A.430	Life insurance	Annuities; credit life insurance; group life insurance; life insurance policies issued in connection with certain pension and welfare plans; variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account	In policy or policy summary	12 days, when a buyer's guide and summary are not delivered before accepting applicant's initial premium or premium deposit	Unconditional refund
	NV ST §689A.170	Individual health insurance policies	Nonrenewable accident policies and individual credit health insurance policies	In policy or in separate rider attached to policy when delivered, captioned and printed on face page or notice of provision printed or stamped on face page	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	NV Admin. Code 687B.060	Individual long-term care insurance contracts or certificates		Prominently printed on or attached to 1st page	30 days	Premium
	NV Admin. Code 688A.115 NV Admin. Code 688A.120	Annuities; deposit funds accepted in conjunction with individual life insurance policies or with annuity contracts which are subject to NV Admin. Code 688A.110 to NV Admin. Code 688A.180; individual deferred annuities other than variable annuities, investment annuities and contracts registered with the SEC; and certain deposit fund arrangements	Employer-paid group annuities; immediate annuities; policies or contracts issued in connection with certain pension plans; a single advance payment of specific premiums equal to the discounted value of the premiums; or a policyholder's deposit account established certain conditions	In policy, contract, or contract summary	10 days, when no contract summary is provided before accepting the applicant's initial consideration	"Unconditional refund"
	NV ST §688A.165 NV Admin. Code 686A.540 NV Admin. Code 686A.563	Replacement of annuity contract, pure endowment contract or policy of life insurance	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	In contract or policy, or notice attached to contract or policy	30 days	Premium, including contract or policy fees or charges
NH	NH Rev. Stat. Ann. §415-D:2 NH Rev. Stat. Ann. §415-D:7	Individual long-term care policies or group certificates		Prominently printed on or attached to 1st page	30 days	Premium
	NH Code Admin. R. Ins 401.04 (f)	Individual life policies and individual annuity contracts		In conspicuous place on face page of policy	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	NH Code Admin. R. Ins 306.03 NH Code Admin. R. Ins 306.06	Annuities and deposit funds accepted in conjunction with individual life insurance policies or with annuity contracts	Individual deferred annuities and group annuities which are: variable annuities; investment annuities; contracts registered with the Federal Securities and Exchange Commission; or contracts which have variable annuity features available at the option of the contract owner; certain employer-paid group annuities; immediate annuities; policies or contracts issued in connection with certain pension plans; a single advance payment of specific premiums equal to the discounted value of such premiums; or a policyholder's deposit account established under certain circumstances.	In contract, policy, or policy summary	10 days, when no contract summary is provided before accepting the applicant's initial consideration	"Unconditional refund"
	NH Code Admin. R. Ins 1901.02 NH Code Admin. R. Ins 1901.07 (a)(11)	Individual accident and health insurance policies and group supplemental health insurance policies	Single premium nonrenewable policies, long-term care insurance, Medicare supplemental insurance	Printed on first page of policy or certificate or attached to it	30 days	Premium
	NH Code Admin. R. Ins 302.02 NH Code Admin. R. Ins 302.06 (a)(4)	Replacement of life insurance and annuities by insurers that use producers	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	May be included in Appendix A or C.	30 days	Premium/consideration, including policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract
NJ	NJ Stat. Ann. §17B:25-2.1	Individual life insurance	Group insurance	In policy or notice attached to policy	10 days	Premium, including policy fees or charges

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	NJ Admin. Code §11:4-21.3 (g)	Limited death benefit policies		In policy	30 days	Premium
	NJ Admin. Code §11:4-34 Appendix C	Long-term care insurance		In Appendix C	30 days	Premium
	NJ Stat. Ann. §17B:26-3.1	Individual health insurance	Group and blanket health insurance	Notice in or attached to policy	10 days	Premium, policy fees and other charges
	NJ Admin. Code §11:4-2.1 NJ Admin. Code §11:4-2.4 (a)(5)	Replacement of life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	Notice may be included in Appendix A or C.	30 days	Premium, including policy fees or charges or, in case of variable or market value adjustment policy or contract, payment of cash surrender value provided under policy or contract plus fees and other charges deducted from the gross premiums or considerations or imposed under policy or contract
	NJ Stat. Ann. §17B:25-38 NJ Stat. Ann. §17B:25-39 NJ Bulletin 2009-6 NJ Bulletin 2009-12	Individual fixed deferred and immediate annuity contracts solicited directly to consumers		In contract or in an attached notice	10 days	Account value including contract fees or other charges
NM	NM Stat. Ann. §59A-23A-6 (E)	Long-term care policies, certificates, or riders	Employer group policies, certificates or riders	Prominently printed on or attached to 1st page	30 days	Premium, within 30 days of return of policy, certificate or rider

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	NM Admin. Code 13.9.12 Sections 13.9.12.2 and 13.9.12.8 (C)	Group and individual annuities	Registered or non-registered annuities or other registered products; immediate and deferred annuities that contain no nonguaranteed elements; annuities used to fund certain pension plans; structured settlement annuities		15 days, when a buyer's guide and disclosure document are not provided at or before the time of application	Return of contract without penalty
	NM Admin. Code 13.9.5 Sections 13.9.5.2 and 13.9.5.9	Life insurance	Annuities, credit life insurance, group life insurance, life insurance policies issued in connections with pension and welfare plans, or variable life insurance	In policy	10 days, when the Buyer's Guide is not delivered prior to acceptance of the applicant's initial premium or premium deposit	"Unconditional refund"
	NM Admin. Code 13.9.6 Sections 13.9.6.2 and 13.9.6.10 (A)(4)	Replacement of life insurance or annuities by insurers that use producers	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	Notice may be included in Appendix A or C	30 days	Premium/consideration, including policy fees or charges or, in case of variable or market value adjustment policy, payment of cash surrender value or contract plus fees and other charges deducted from gross premiums or considerations or imposed under policy

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
NY	NY Ins. §3203 (a)(11)	Individual life insurance policies	Mail order policies	In policy or notice attached to policy	Not less than 10 days nor more than 30 days	Either (i) premium, including policy fees or other charges or (ii) if policy provides for adjustment of cash surrender benefit in accordance with a market-value adjustment formula and if policy or notice attached to it so provides, amount of cash surrender benefit as adjusted assuming no surrender charge plus amount of fees and other charges deducted premium paid or from policy value
	NY Ins. §3203 (a)(11)	Individual life insurance policies sold by mail order		In policy or notice attached to policy	30 days	See above.
	NY Ins. §3209 (a) and (d)(7)	Life insurance, annuities, and funding agreements	Credit life insurance; group life insurance; life insurance, annuities and funding agreements issued in connection with certain pension and welfare plans; funding agreements issued to other than individuals subject to NY Ins. §3222(b); any group annuity unless at least one certificate is subject to NY Ins. §4223(b)(2)		10 days	Premium
	NY Ins. §3209 (b)(1)	Direct mail life insurance	See above	In policy	30 days (if no unconditional refund provision, insurer must include Buyer's Guide in each initial solicitation)	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	NY Ins. §3219 (a)(9)	Certain annuities and pure endowments (except as provided in NY Ins. §4240, every annuity or pure endowment contract except a group annuity contract, and every group annuity certificate to which NY Ins. §4223 applies by reason of subsection (b) thereof, or to which § 4223 would apply if such certificate were not a variable annuity)	See parenthetical text in "applies to" column.	In contract or certificate or attached notice	Not less than 10 nor more than 30 days; 30 days for direct response contract or certificate	Either (i) consideration, including fees or other charges or, if contract or certificate, or notice attached so provides, and contract or certificate is subject to provisions of NY Ins. §4223 and provides for determination of cash surrender benefits in accordance with market-value adjustment formula, (ii) cash surrender benefits provided plus fees and other charges deducted from gross considerations or imposed under contract or certificate
	NY Ins. §3216 (c)(10)	Individual accident and health insurance policies	Single premium nonrenewable policies insuring against accidents only or accidental bodily injuries only	Prominently printed on or attached to 1 <sup>st</sup> page	Not less than 10 days or more than 20 days; 30 days for mail order, long-term care insurance, or Medicare supplemental contract or certificate	Premium, including policy fees and other charges
	11 NYCRR 54.6 (b)(1)(v)	Variable life policies		Captioned provision on cover page	10 days	Premium
	11 NYCRR 53-2.1 (a)(9)	Policies subject to NY Ins. Code §4232 (b) (individual life policies)		Preliminary written statement	10 days	Premium paid or adjusted amount if such policy provides for a market-value adjustment

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	11 NYCRR 51.3 11 NYCRR 51.6 (d)	Replacement of life insurance policies and annuity contracts	See ACLI's Replacement Law Survey for list of exemptions.	Appendix 10C contains free look statement	60 days	Premium/consideration, or in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender benefits plus the amount of fees and other charges deducted from gross considerations or imposed under the policy or contract; payment within 10 days of receipt of policy or contract for cancellation
NC	NC Gen. Stat. §58-55-30 (f) and (g)	Individual long-term care policies, including direct response		Prominently printed on 1st page or attached	30 days	Premium
	NC Gen. Stat. §58-60-5 NC Gen. Stat. §58-60-15	Life insurance	Individual and group annuities; credit life insurance; group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy); life insurance policies issued in connection with certain pension and welfare plans; variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.	In policy or policy summary	10 days, when no Buyer's Guide and a Policy Summary are provided prior to accepting initial premium deposit	Premium
	11 NCAC 12.0447	Individual life insurance or annuity, also applies to any group life or annuity policy that contains free look provision		Sticker or printed on face of policy	10 days	Premium



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	11 NCAC 12.0436 (1)(c) and (3)(a)(v)	Variable life insurance	Variable policies issued in connection with qualifying pension, profit-sharing, and retirement plans	Captioned on cover page of policy	Within 45 days from execution or within 10 days of receipt of policy by policyholder, whichever is later	Premium
	11 NCAC 12.0601 11 NCAC 12.0604 11 NCAC 12.0612 (a)(4)	Replacement of existing life insurance and annuities by insurers that use producers	See ACLI's Replacement Law Survey for list of exemptions.	May be included in the notice required by 11 NCAC 12.0611 (reference to NAIC Model Notice)	30 days	Premium/consideration, or in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender benefits plus the amount of fees and other charges deducted from gross considerations or imposed under the policy or contract
ND	ND Cent. Code §26.1-33-02.1	Life insurance policies and certificates		Prominently printed on or attached to 1st page	20 days	Premium
	ND Cent. Code §26.1-34-01.1	Annuity policies and certificates		Prominently printed on or attached to 1st page	20 days	Premium, except variable annuities where purchaser is entitled to value of annuity plus all expense charges

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	<p>ND Cent. Code §26.1-36-01</p> <p>ND Cent. Code §26.1-36-02.1</p>	Individual accident and health insurance policies and certificates	<p>Any policy of workforce safety and insurance or any policy of liability insurance with or without supplementary expense coverage; reinsurance; blanket or group insurance; life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as provide additional benefits in case of death or dismemberment or loss of sight by accident, or as operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract</p>	Prominently printed on or attached to 1st page	10 days	Premium
	ND Cent. Code §26.1-45-09 (1)	Long-term care policies	Group long-term care certificate issued to a group defined in subdivision (a) of subsection 3 of ND Cent. Code §26.1-45-01 (certain employer/labor groups)	Prominently printed on or attached to 1st page	Within 30 days of date of delivery or 30 days of effective date, whichever occurs later	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	ND Admin. Code §45-04-04-03 (3)(a)(5)	Variable life insurance policies		Captioned provision on cover page of policy	10 days	To extent permitted by state law, refund equals sum of: (i) difference between premiums paid including policy fees or other charges and amounts allocated to separate accounts; and (ii) value of amounts allocated to separate accounts, on date the returned policy is received by insurer or its agent. Until state law authorizes this method, amount of refund is premium.
OH	OH Rev. Code Ann. §3923.44 (H)	Individual long-term care policies		Printed prominently on or attached to 1st page	30 days	Premium
	OH Admin. Code §3901-6-03 (C) and (E)(1)(b)	Life insurance	Annuities, credit life insurance, group life insurance, life insurance policies issued in connection with pension and welfare plans, or variable life insurance	In policy or policy summary	10 days, when the Buyer's Guide and Policy Summary are not delivered prior to acceptance of the applicant's initial premium or premium deposit	"Unconditional refund"

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	OH Admin. Code §3901-6-08 (E)(3)(a)(v)	Variable life insurance		Captioned provision on cover page	10 days	To extent permitted by state law, refund equals sum of (i) difference between premiums paid including policy fees or other charges and amounts allocated to separate accounts; and (ii) value of amounts allocated to separate accounts, on date the returned policy is received by insurer or its agent. Until state law authorizes this method, amount of refund is premium.
	OH Admin. Code §3901-6-14 (C) and (E)	Group and individual annuities	Variable annuities or other registered products, immediate and deferred annuities that contain no non-guaranteed elements, annuities used to fund certain pension plans and nonqualified deferred compensation arrangements, structured settlement annuities, and funding agreements.		15 days, if buyer's guide and disclosure document are not provided at or before the time of application	Annuity contract can be returned "without penalty"

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	OH Admin. Code §3901-6-05 (F)(1)(d)	Replacement of life insurance and annuities by insurers that use agents	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Appendix A or C	30 days	Premium or considerations paid, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract
OK	36 OK Stat. Ann. §4003.1	Individual life insurance or annuities	Life insurance policies issued in connection with credit transaction or issued under contractual policy change or conversion privilege contained in policy	Printed on or attached to policy	10 days	Premium or monies paid will be refunded by insurer within 30 days of cancellation, or insurer shall pay interest which shall be the same rate of interest as the average U.S. Treasury Bill rate of the preceding calendar year plus two percentage points, which shall accrue from date of cancellation until premiums or moneys are returned.
	36 OK Stat. Ann. §4426 (E)	Long-term care policies		Prominently printed on 1st page or attached	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	OK Admin. Code §365:10-5-6 (a)(7)	Individual accident and health insurance policies	Single premium nonrenewable policies	Prominently printed on or attached to 1st page	10 days, or 30 days for direct response policies to persons eligible for Medicare	Premium or monies paid will be refunded by insurer within 30 days of cancellation, or insurer shall pay interest which shall be the same rate of interest as the average U.S. Treasury Bill rate of the preceding calendar year plus two percentage points, which shall accrue from date of cancellation until premiums or moneys are returned.
	36 OK Stat. Ann. §4034 (G)	Replacement of life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	Prominent written notice attached to or as part of 1st page of policy	20 days	Premium
OR	OR Rev. Stat. §743.655 (6)	Individual long-term care insurance policies and certificates		Prominently printed on or attached to 1st page	30 days.	Premium
	OR Rev. Stat. §743.492	Individual health insurance policies	Single premium nonrenewable policies	Printed on face or attached to policy	10 days	Premium
	OR Admin. R. 836-051-0005 OR Admin. R. 836-051-0015	Individual life insurance policies [Note that the definition of insurance in OR Rev. St. 731.170 includes annuities with exceptions.]	Annuities; credit life insurance; group life insurance; life insurance policies issued in connection with certain employee benefit plans; and life insurance policies that comply with OR Admin. R. 836-051-0500 to OR Admin. R. 836-051-0600 (illustrations requirements).	In policy or policy summary	10 days, when Buyer's Guide and a Policy Summary are not provided prior to accepting the applicant's initial premium or premium deposit	"Unconditional refund"

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	OR Admin. R. 836-080-0001 (4) OR Admin. R. 836-080-0029 (1)(d)	Replacement of life insurance and annuities by insurers that use agents, policies used to fund pension plans	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Appendix A or C.	30 days	Premium/consideration, including policy fees or charges or, in case of variable or market value adjustment policy or contract, payment of cash surrender value or contract plus fees and other charges deducted from gross premiums or considerations or imposed under such policy or contract
PA	40 PA Cons. Stat. Ann. §510c (a)(1)	Individual fixed dollar life insurance or endowment policies		Prominently printed on or attached to 1st page	10 days	Premium
	40 PA Cons. Stat. Ann. §510c (a)(2) and (b)(2)	Replacements of existing life insurance policy or annuity contracts with individual variable life insurance policies, individual fixed dollar life insurance or endowment policies by the same insurer or insurer group		Prominently printed on or attached to 1st page	45 days	Premium, but for variable life, an amount equal to any of the following: (i) the stipulated payment/premium; (ii) the difference between: (A) premiums, including policy fees or other charges and the amounts allocated to separate accounts; and (B) the cash value or, if the policy does not have a cash value, the reserve on the date of surrender attributable to the amounts so allocated; or (iii) the greater of subparagraph (i) or (ii)

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	40 PA Cons. Stat. Ann. §510c (a)(3) and (b)(3)	Replacements of existing life insurance policy or annuity contract with individual variable life insurance policies, individual fixed dollar life insurance or endowment insurance policies by an insurer or insurer group other than the one which issued the original policy or contract		Prominently printed on or attached to 1st page	At least 20 days	An amount equal to any of the following: (i) the stipulated payment/premium; (ii) the difference between: (A) premiums, including policy fees or other charges and the amounts allocated to separate accounts; and (B) the cash value or, if the policy does not have a cash value, the reserve on the date of surrender attributable to the amounts so allocated; or (iii) the greater of subparagraph (i) or (ii)
	40 PA Cons. Stat. Ann. §510c (b)(1)	Individual variable life policies		Prominently printed on or attached to 1st page	At least 10 days	An amount equal to any of the following: (i) the stipulated payment/premium; (ii) the difference between: (A) premiums, including policy fees or other charges and the amounts allocated to separate accounts; and (B) the cash value or, if the policy does not have a cash value, the reserve on the date of surrender attributable to the amounts so allocated; or (iii) the greater of subparagraph (i) or (ii)
	40 PA Cons. Stat. Ann. §510d (a)(1)	Individual fixed dollar annuities or pure endowment contracts, individual variable annuities		Prominently printed on or attached to 1st page	10 days	Stipulated payment or premium



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	40 PA Cons. Stat. Ann. §510d (a)(2)	Replacement of annuity or life insurance policy with individual fixed dollar annuities by the same insurer or insurer group		Prominently printed on or attached to 1st page	45 days	Premium
	40 PA Cons. Stat. Ann. §510d (a)(3)	Replacement of annuity or life insurance policy with individual fixed dollar annuities by insurer or insurer group other than one issuing policy or contract		Prominently printed on or attached to first page	20 days	Premium
	40 PA Cons. Stat. Ann. §510d (b)(1)	Individual variable annuities		Prominently printed on or attached to 1st page	10 days	Amount equal to any of the following: (i) stipulated payment or premium; (ii) the difference between: (A) premiums paid, including any contract fees or other charges and amounts allocated to any separate accounts under the contract; and (B) cash value of contract or, if contract does not have a cash value, the reserve for contract on date of surrender attributable to amounts so allocated; or (iii) the greater of subparagraphs (i) or (ii).
	40 PA Stat. Ann. §752 (A)(10)	Accident and health insurance	Single premium renewable policy	Notice prominently printed on policy	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	31 PA Code §89.73	Individual accident and health contracts		Printed on face of policy or on booklet-type policies provision shall appear on outside cover portion of policy	10 days	"Full refund"
	40 PA Cons. Stat. Ann. §510d (b)(2)	Replacements of an existing annuity contract or life insurance policy with individual variable annuity contracts by the same insurer or insurer group		Prominently printed on or attached to 1st page	45 days	Amount equal to any of the following: (i) stipulated payment or premium; (ii) the difference between: (A) premiums paid, including any contract fees or other charges and amounts allocated to any separate accounts under the contract; and (B) cash value of contract or, if contract does not have a cash value, the reserve for contract on date of surrender attributable to amounts so allocated; or (iii) the greater of subparagraphs (i) or (ii).

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	40 PA Cons. Stat. Ann. §510d (b)(3)	Replacements of an existing annuity contract or life insurance policy with individual variable annuity contracts by an insurer or insurer group other than the one which issued the original contract or policy		Prominently printed on or attached to 1st page	20 days	Amount equal to any of the following: (i) stipulated payment or premium; (ii) the difference between: (A) premiums paid, including any contract fees or other charges and amounts allocated to any separate accounts under the contract; and (B) cash value of contract or, if contract does not have a cash value, the reserve for contract on date of surrender attributable to amounts so allocated; or (iii) the greater of subparagraphs (i) or (ii).
	40 PA Cons. Stat. Ann. §576	Industrial life or industrial endowment insurance		Prominently printed on or attached to 1st page	10 days	Premium
	31 PA Code §81.6 (d)	Replacement of life policies or annuities that use agents or brokers	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	Prominently printed on or attached to 1st page	20 days	Premium
	31 PA Code §82.24 (1)(v)	Variable life policies		Captioned provision prominently printed on 1st page	10 days	Premium
PR	26 L.P.R.A. §1338	Individual life policies and individual annuities	Reinsurance, group or collective life and annuities	A clause re: the right of the insured to examine the policy shall appear on the cover of the policy or in any area that is visible without opening the policy	Not specified	

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
RI	RI Gen. Laws §27-4-6.1	Individual life policies and individual annuities delivered after January 1, 2008		Captioned on face page of policy or notice of provision stamped or printed conspicuously on face page or contained in attached rider	20 days	Premium
	RI Gen. Laws §27-34.2-6 (g)	Long-term care policies and certificates		Prominently printed on 1st page or attached to policy or certificate	30 days	Premium
	RI ADC 02 030 029, Section 6(A)(4)	Replacement life insurance and annuities by insurers that use producers	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Appendix A or C	30 days	Premiums or considerations paid, including any policy fees or charges, or, in case of variable or market value adjustment policy, a payment of cash surrender value provided under policy plus fees and other charges deducted from gross premiums or considerations or imposed under policy
SC	SC Code Ann. §38-63-220 (b)	Individual life policies		Clear, understandable, and conspicuous provision on 1st page	10 days	Premium
	SC Code Ann. §38-63-220 (b)	Individual life policy solicited by direct response insurer		Clear, understandable, and conspicuous provision on 1st page	31 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	SC Code Ann. §38-69-120 (2)	Fixed dollar annuities; pure endowment contracts; reversionary annuities; and variable annuities	Group annuities	Clear, understandable, and conspicuous provision on 1st page	10 days	Premium
	SC Code Ann. §38-69-120 (2)	Fixed dollar annuities; pure endowment contracts; reversionary annuities; and variable annuities solicited by direct response	Group annuities	Clear, understandable, and conspicuous provision on 1st page	31 days	Premium
	SC Code Ann. §38-72-60 (F)	Long-term care policies and certificates		Prominently printed on or attached to 1st page	30 days	Premium
	SC Code of Regulations R. 69-12 Part B, art. IV, Section 3(a)(5)	Variable life policy		Captioned provision on the cover page or pages corresponding to the cover page	10 days	To the extent permitted by state law, the refund equals total premiums paid or the sum of (i) the difference between premiums paid including policy fees or other charges and the amounts allocated to separate accounts; and (ii) the value of the amounts allocated to separate accounts, on the date the returned policy is received by the insurer or its agent.
	SC Code of Regulations R. 69-39 Sections 2 and 4	Group and individual annuities	Registered or non-registered variable annuities; immediate and deferred annuities that contain no non-guaranteed elements; annuities used to fund certain pensions and retirement funds; structured settlement annuities; charitable annuities; funding agreements		15 days, when a buyer's guide and disclosure document are not provided at or before the time of application	Return contract "without penalty"

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	SC Code of Regulations R. 69-34 Section (H)(1)(g)	Individual accident and health insurance policies	Trip or travel ticket policies	Prominently printed on or attached to 1 <sup>st</sup> page	10 days, but if direct response, 30 days	Premium
	SC Code Ann. §38-63-220 (b)	Individual life policies		Clear, understandable, and conspicuous provision on 1st page	10 days; 20 days if replacement of life insurance involved; 31 days if direct response	Premium
	SC Code Ann. §38-69-120 (2)	Fixed dollar annuities; pure endowment contracts; reversionary annuities; and variable annuities	Group annuities	Clear, understandable, and conspicuous provision on 1st page	10 days; 20 days if replacement of annuity involved; 31 days if direct response	Premium
	SC Code of Regulations R. 69-12.1	Replacement of life insurance and annuities by insurers that use producers	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Appendix A or C	30 days [Note that this is for replacement of policies that use producers]	An unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of variable or market value adjustment policy or contract, a payment of the cash surrender value plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract
SD	SD Codified Laws §58-15-8.1	Individual life policies		Printed on or attached to the face page	10 days	Premium
	SD Codified Laws §58-15-59.1	Individual annuity contracts	Variable annuity contracts	Printed on or attached to the annuity contract	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	SD Codified Laws \$58-17B-9	Long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
	SD Codified Laws \$58-28-24.1	Individual variable annuity contracts issued on or after July 1, 1978		In contract or notice attached to contract	10 days	The refund equals sum of (i) difference between premiums paid and amounts allocated to any separate accounts, and (ii) cash value of contract on date of surrender attributable to amounts so allocated
	SD Codified Laws \$58-17-11	Individual health insurance policies or contracts	Single premium nonrenewable policies or contracts	Printed on or attached to policy or contract	10 days	Premium
TN	TN Code Ann. \$56-7-702 (a)(17)	Industrial life policies		Clear, understandable, and conspicuous provision in policy	10 days	Premium
	TN Code Ann. \$56-42-105 (f)(1)	Individual long-term care policies		Prominently printed on or attached to 1st page	30 days	Premium
	TN Code Ann. \$56-42-105 (f)(2)	Long-term care policies issued pursuant to direct response solicitation		Prominently printed on or attached to 1st page	30 days	Premium
	TN Code Ann. \$56-26-129	Individual accident and health insurance policies or contracts		Printed thereon or attached thereto"	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	TN Admin. Code 0780-01-40-.02 TN Admin. Code 0780-01-40-.04	Life insurance [Note that the definition of life insurance under TN Code Ann. §56-2-201 (4) states that "for the purposes of this title, the transacting of life insurance includes the granting of annuities."]	Annuities, credit life, group life, life insurance issued in connection with certain pension and welfare plans; variable life where death benefits and cash values vary in accordance with unit values of investments held in a separate account	In policy or Policy Summary	10 days, when no Buyer's Guide and Policy Summary are provided prior to accepting the applicant's initial premium or premium deposit	Unconditional refund
	TN Admin. Code 0780-01-24-.04 TN Admin. Code 0780-01-24-.07 (4)	Replacement of life insurance policies and annuities by insurers that use agents	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	In policy or in separate written notice	20 days	Premium
TX	TX Ins. Code Ann. §1651.054	Long-term care policies		Prominently printed on 1st page or attached to benefit plan document	30 days	Premium
	TX Ins. Code Ann. §1201.058	Individual accident and health insurance policy	Single premium nonrenewable policies	Printed or attached to policy	10 days	Premium
	28 TX Admin. Code §3.804 (3)(A)(v)	Variable life contract		Captioned provision on cover page or pages corresponding to cover page	10 days	Premium
	28 TX Admin. Code §3.3829 (a)(5)	Long-term care insurance		Prominently printed on or attached to 1st page	30 days	Premium



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	TX Ins. Code Ann. §1116.002	Annuity contracts	Annuity contract whose prospective owner is an accredited investor		20 days	Unconditional refund of premium, including contract fees or charges;  For variable or modified guaranteed annuity contracts, unconditional refund equal to the cash surrender value plus any fees or charges
	TX Ins. Code Ann. §1114.004 TX Ins. Code Ann. §1114.053 (e)	Replacement of life insurance and annuities by insurers using agents	See ACLI's Replacement Law Survey for list of exemptions.	Notice may be combined with other notices required by Chapter 1114 (Replacement)	30 days	Premium, including policy fees and charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract.
UT	UT Code Ann. §31A-22-423	Life insurance and annuities policies, certificates and contracts including replacements	Employee group term life; group master policy; noncontributory certificate; credit life insurance certificate; and other classes of life insurance policies that the commissioner specifies by rule	Prominently printed on or attached to cover or front page	10 days; 30 days if replacement policy or certificate	Premium
	UT Code Ann. §31A-22-1408	Individual long-term care policies and certificates	Employee and labor union long-term care insurance certificates	Prominently printed on or attached to 1st page	30 days	Premium
	UT Code Ann. §31A-22-605 (9)	Limited accident and health policies or certificates issued to persons eligible for Medicare		Prominently printed on or attached to front page of policy	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	UT Code Ann. §31A-22-606	Accident and health policies	Group policies; policies issued to persons entitled to a 30-day examination period under <a href="#">UT Code Ann. §31A-22-605 (9)</a> ; single premium nonrenewable policies issued for terms not longer than 60 days; policies covering accidents only or accidental bodily injury only; and other classes of policies which the commissioner by rule specifies after a finding that a right to return those policies would be impracticable or unnecessary to protect the policyholder's interests	Prominently printed on or attached to front page of policy	10 days	Premium
	UT Admin. Code R590-93, Sections 590-93-2 and 590-93-6	Replacement of life insurance and annuities by insurers that use producers	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	Notice may be included in Appendix A or C	30 days	Premium/consideration
VT	VT Stat. Ann. tit. 8 §8089	Individual long-term care policies and certificates including direct response policies direct response solicitation		Prominently printed on 1st page	30 days	Premium
	VT Stat. Ann. tit. 8 §4063 (8)	Individual health insurance	Single premium nonrenewable policies insuring against accident only or medical costs or accidental bodily injury only	Prominently printed on or attached to 1 <sup>st</sup> page	10 days, or 30 days for persons eligible for Medicare by reason of age	Premium, including policy fees and other charges
	VT Admin. Code 4-3-4:3 (B) and VT Admin. Code 4-3-4:5(A)	Individual life insurance	Annuities; credit life; group life; life insurance issued in connection with certain pension and welfare plans; variable life where death benefits and cash values vary in accordance with unit values of investments held in separate account	In policy or policy summary	10 days, when Buyer's Guide and Policy Summary are not provided prior to accepting the applicant's initial premium or premium deposit	"Unconditional refund"

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	VT Admin. Code 4-3-13:IV, Section 3(A)(5)	Variable life insurance		Captioned provision on cover page or pages corresponding to the cover page	10 days	Premium
	VT Admin. Code 4-3-43:1(B) and VT Admin. Code 4-3-43:5(A)(4)	Replacement of life policies and annuities by insurers using producers	See ACLI's Replacement Law Survey for list of exemptions.	Notice may be included in Appendix A or C	30 days	Premium/consideration including policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract
VA	VA Code Ann. §38.2-3300 VA Code Ann. §38.2-3301	Individual life insurance [Note that definition of life insurance in VA Code Ann. §38.2-102 includes insurance that also provides "a special benefit or an annuity" in the event of a disability and includes additional benefits providing specified disease coverage or limited benefit health coverage]	Group life, industrial life, annuities, credit life, and pure endowments, with or without return of premiums or of premiums and interest; reinsurance; policies issued or granted in exchange for lapsed or surrendered policies	Printed on policy	10 days	Premium
	VA Code Ann. §38.2-5208	Long-term care insurance		Prominently printed on or attached to 1st page	30 days	Premium
	VA Code Ann. §38.2-3342	Industrial life		Printed on policy	10 days	Premium
	VA Code Ann. §38.2-3502	Individual accident and sickness policy		Printed on policy	10 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	14 VA Admin. Code 5-80-300 (1)	Variable life insurance		In a notice describing free-look provisions of VA Code Ann. §38.2-3301	10 days	Premium
	14 VA Admin. Code 5-30-30 14 VA Admin. Code 5-30-51(A)(4)	Replacement of life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	May be included in Form 30-A or 30-C	10 days	Premiums or considerations, including policy fees or charges or, in the case of a variable or market value adjustment contract, a payment of the cash surrender value plus the fees and other charges deducted from the gross premiums or considerations or imposed under the contract
WA	WA ST §48.23.380	Individual life insurance	Individual life policies issued in connection with credit transactions or under a contractual change or conversion privilege provision	Printed on face or attached to policy	10 days	Premium, but a 10 percent penalty shall be added to premium refund not paid within 30 days of return of policy to insurer or insurance producer
	WA ST §48.20.013	Individual disability policy	Single premium nonrenewable policies	Printed on face or attached to policy	10 days	Premium, but a 10 percent penalty shall be added to premium refund not paid within 30 days of return of policy to insurer or insurance producer

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	WA ST §48.18A.035	Individual variable life and annuity contracts		Printed on face or attached to contract	10 days	Market value of the assets purchased by its premium, less taxes and investment brokerage commissions, but a 10 percent penalty shall be added to premium refund not paid within 30 days of return of policy to insurer or insurance producer
	WA ST §48.84.050 (2)	Long-term care insurance		Prominently displayed on 1st page of policy or contract	30 days	Premium, but a 10 percent penalty shall be added to premium refund not paid within 30 days of return of policy to insurer or insurance producer
	WA ST §48.84.050 (2)	Long-term care policies solicited and sold by mail		Prominently displayed on 1st page of policy or contract	60 days	Premium, but a 10 percent penalty shall be added to premium refund not paid within 30 days of return of policy to insurer or insurance producer
	WA Admin. Code §284-23-320 WA Admin. Code §284-23-350	Individual deferred annuities other than: (i) variable annuities, (ii) investment annuities, and (iii) contracts registered with the Federal Securities and Exchange Commission; and deposit funds	Employer paid group annuity contracts; immediate annuity contracts; policies or contracts issued in connection with certain employee benefit plans; a single advance payment of specific premiums equal to the discounted value of such premiums; and a policyholder's deposit account in certain circumstances	In annuity contract or associated life insurance policy	10 days, when a Contract Summary is not provided prior to accepting the applicant's initial consideration	"Unconditional refund"

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	WA Admin. Code §284-23-455 (4) WA Admin. Code §284-23-430	Replacement of life insurance and annuities by insurers that use agents or brokers	See ACLI's Replacement Law Survey for list of exemptions.	In policy or in separate written notice delivered with policy	20 days	Premium
WV	WV Code §33-6-11b	Life, sickness, and accident insurance policies, certificates, or contracts [Note that under WV Code §33-1-10, the definition of life insurance includes "insurance on human lives including endowment benefits," and scope of Article 13, "Life Insurance," includes annuities.]	Group annuity policies, contracts, or certificates issued in connection with qualified or exempt pension or profit-sharing plan	Prominently printed on 1st page	10 days	Premium
	WV Code §33-15A-6 (f)(1)	Long-term care policies	Certain employer groups listed in WV Code §33-15A-4(e)(1)	Prominently printed on or attached to 1 <sup>st</sup> page	30 days	Premium
	WV C.S.R. 114-11E-2 WV C.S.R. 114-11E-4 (4.1.c)	Group and individual annuities	See exemptions listed in WV C.S.R. 114-11E-2		15 days, when Buyer's Guide and disclosure document are not provided at or before the time of application	Applicant may return contract "without penalty"
	WV C.S.R. 114-32-12 (12.4)	Replacement for accident and sickness policies or long-term care policies solicited by direct response		In a written notice as specified in WV C.S.R. 114-32-12 (12.4)	30 days	
	WV C.S.R. 114-32-12 (12.3)	Replacement for accident and sickness policies and long-term care policies other than those solicited by direct response		In a written notice as specified in WV C.S.R. 114-32-12 (12.3)	30 days	

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	WV C.S.R. 114-12-6 (6.8)	Individual accident and sickness insurance	Single-premium nonrenewable policies (also see WV C.S.R. 114-12-1 (1.1) for exemptions from scope of chapter)	Prominently printed on or attached to 1 <sup>st</sup> page	10 days	Premium
	WV C.S.R. 114-8-3 WV C.S.R. 114-8-6 (6.1.d.)	Replacement life insurance and annuities by insurers that use producers	See ACLI's Replacement Law Survey for list of exemptions.	Notice may be included in Appendix A or C	30 days	Premiums or considerations, including any policy fees or charges or, in case of variable or market value adjustment policy or contract, payment of cash surrender value provided plus fees and other charges deducted from gross premiums or considerations or imposed under policy or contract
WI	WI Stat. Ann. §632.73	Individual or franchise disability	Single premium nonrenewable policies issued for six months or less or covering accidents only or accidental bodily injuries only, and other policies exempted by rule of commissioner, or to Medicare supplement policies, Medicare replacement policies or long-term care insurance policies subject to WI Stat. Ann. §632.73 (2m).	Conspicuously printed on or attached to 1st page	10 days	All payments made
	WI Stat. Ann. §632.73 (2m)	Long-term care insurance	Single premium nonrenewable policies issued for terms not greater than 6 months or covering accidents only or accidental bodily injuries only and other policies exempted by rule of commissioner	Prominently printed on or attached to 1st page	30 days	Premium

State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
	WI ADC Ins. 2.15 (3) and (8)(a)	Annuities and deposit fund arrangements not marketed through intermediary	Variable annuities; contracts registered with the SEC; certain employer group annuity and pure endowment contracts; certain immediate annuity contracts; policies or contracts issued in connection with certain employee benefit plans; individual retirement accounts and individual retirement annuities; a single advance payment of specified premiums equal to the discounted value of such premiums; a policyholder's deposit account established for certain purposes; and settlement options under life insurance or annuity contracts	Guarantee to the contractholder	30 days, when the insurer does not use an intermediary and provides the Contract Summary and Buyer's Guide to Annuities at the point of contract delivery	Premium
	WI ADC Ins. 2.14 (2)(b) and (4)(c)	Life insurance not marketed through intermediary	Annuities, credit life, group life, life insurance issued in connection with certain pension and welfare plans, variable life where death benefits and cash values vary in accordance with unit values of investments held in separate accounts	Guarantee to the policyholder	30 days, when no Buyer's Guide is provided at time application is taken	Premium
	WI ADC Ins. 2.07 (6)(a)(4)	Replacement of life policies or annuity contracts	See ACLI's <a href="#">Replacement Law Survey</a> for list of exemptions.	Notice may be included in Appendix I or III	30 days	Premiums or considerations paid, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value plus fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract



State	Citation	Applies to	Does Not Apply to	Provision Location	Days	Refund Amount
WY	WY Stat. Ann. §26-38-105 (j)	Long-term care insurance		Prominently printed on or attached to 1st page	30 days	Premium shall be refunded within 10 days, excluding Saturdays, Sundays and legal holidays, from date the policy or certificate is returned, or it shall draw interest at the maximum rate allowed for a credit service charge under <b>WY Stat. Ann. §40-14-212 (b)</b>
	WY Admin. Code Ins Gen Ch 12 §4 WY Admin. Code Ins Gen Ch 12 §7 (d) WY Admin. Code Ins Gen Ch 12 §8 (c ) (iv)	Replacement life insurance and annuities by insurers that use <b>producers</b> ; replacement of direct response life insurance and annuities	See ACLI's Replacement Law Survey for list of exemptions.	In policy or separate written notice delivered with policy	<b>30 days</b>	Premium: <b>For variable policy or contract, cash surrender plus fees</b>