

## SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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### Section 1. Purpose

- A. The purpose of this regulation is to require producers, as defined in this regulation, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation or to subject a producer to civil liability under the best interest standard of care outlined in Section 6 of this regulation or under standards governing the conduct of a fiduciary or a fiduciary relationship.

**Drafting Note:** The language of Subsection B comes from the NAIC *Unfair Trade Practices Act* (#880). If a state has adopted different language, it should be substituted for Subsection B.

**Drafting Note:** Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) specifically refers to this model regulation as the “*Suitability in Annuity Transactions Model Regulation*” (#275). Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.

### Section 2. Scope

This regulation shall apply to any sale or recommendation of an annuity.

### Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

**Drafting Note:** States may wish to use the *Unfair Trade Practices Act* (#880) as enabling legislation or may pass a law with specific authority to adopt this regulation.

### Section 4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- B. 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), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
  - (3) 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; or
  - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
  - D. Formal prepaid funeral contracts.

**Section 5. Definitions**

- A. “Annuity” means an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.
- B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- C. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:
  - (1) Age;
  - (2) Annual income;
  - (3) Financial situation and needs, including debts and other obligations;
  - (4) Financial experience;
  - (5) Insurance needs;
  - (6) Financial objectives;
  - (7) Intended use of the annuity;
  - (8) Financial time horizon;
  - (9) Existing assets or financial products, including investment, annuity and insurance holdings;
  - (10) Liquidity needs;
  - (11) Liquid net worth;
  - (12) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
  - (13) Financial resources used to fund the annuity; and
  - (14) Tax status.
- D. “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in state law or regulations governing producer continuing education course approval].

- E. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in state law or regulations governing producer continuing education course approval].
- F. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
- G. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- H. “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.
- I.
  - (1) “Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.
  - (2) “Material conflict of interest” does not include cash compensation or non-cash compensation.
- J. “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.
- K. “Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
- L. “Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this regulation, “producer” includes an insurer where no producer is involved.
- M.
  - (1) “Recommendation” means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.
  - (2) Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.
- N. “Replacement” means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:
  - (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
  - (2) 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;
  - (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
  - (4) Reissued with any reduction in cash value; or
  - (5) Used in a financed purchase.

**Drafting Note:** The definition of “replacement” above is derived from the NAIC *Life Insurance and Annuities Replacement Model Regulation* (#613). If a state has a different definition for “replacement,” the state should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in state law or regulation.

- O. “SEC” means the United States Securities and Exchange Commission.

**Section 6. Duties of Insurers and Producers**

- A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:
- (1) (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
    - (i) Know the consumer’s financial situation, insurance needs and financial objectives;
    - (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
    - (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
    - (iv) Communicate the basis or bases of the recommendation.
  - (b) The requirements under Subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.
  - (c) The requirements under Subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.
  - (d) The requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.
  - (e) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer’s financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.
  - (f) The requirements under Subparagraph (a) of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.
  - (g) The requirements under Subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.
  - (h) The requirements under Subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

- (i) The requirements under Subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.
  - (j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:
    - (i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;
    - (ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and
    - (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.
  - (k) Nothing in this regulation should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.
- (2) Disclosure obligation.
- (a) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:
    - (i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
    - (ii) An affirmative statement on whether the producer is licensed and authorized to sell the following products:
      - (I) Fixed annuities;
      - (II) Fixed indexed annuities;
      - (III) Variable annuities;
      - (IV) Life insurance;
      - (V) Mutual funds;
      - (VI) Stocks and bonds; and
      - (VII) Certificates of deposit;
    - (iii) An affirmative statement on whether the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products, using the following descriptions:
      - (I) From one insurer;

- (II) From two or more insurers; or
- (III) From two or more insurers although primarily contracted with one insurer.
- (iv) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and
- (v) A notice of the consumer's right to request additional information regarding cash compensation described in Subparagraph (b) of this paragraph;

**Drafting Note:** If a state approves forms, a state should add language to Subparagraph (a) reflecting such approvals.

- (b) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:
  - (i) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and
  - (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and
- (c) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

**Drafting Note:** If a state has adopted the NAIC *Annuity Disclosure Model Regulation* (#245), the state should insert an additional phrase in Subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC *Annuity Disclosure Model Regulation* (#245).

- (3) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.
- (4) Documentation obligation. A producer shall at the time of recommendation or sale:
  - (a) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;
  - (b) Obtain a consumer signed statement on a form substantially similar to Appendix B documenting:
    - (i) A customer's refusal to provide the consumer profile information, if any; and
    - (ii) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and
  - (c) Obtain a consumer signed statement on a form substantially similar to Appendix C acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

**Drafting Note:** If a state approves forms, a state should add language to Subparagraphs (b) and (c) of this paragraph reflecting such approvals.

- (5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

B. Transactions not based on a recommendation.

- (1) Except as provided under Paragraph (2), a producer shall have no obligation to a consumer under Subsection A(1) related to any annuity transaction if:
  - (a) No recommendation is made;
  - (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
  - (c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
  - (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.
- (2) An insurer's issuance of an annuity subject to Paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

C. Supervision system.

- (1) Except as permitted under Subsection B, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.
- (2) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this regulation, including, but not limited to, the following:
  - (a) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant producer training manuals;
  - (b) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of Section 7 of this regulation;
  - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;
  - (d) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for

additional review by the selection criteria;

- (e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with Subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity;
- (f) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;
- (g) The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
- (h) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

**Drafting Note:** The intent of Subparagraph (h) is to prohibit sales contests, sales quotas, bonuses and non-cash compensation based on the sale of a particular product within a limited period of time, but not to prohibit general incentives regarding the sales of a company's products with no emphasis on any particular product.

- (i) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- (3) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Subparagraph (b) of this paragraph.
- (b) An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
- (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
  - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- (4) An insurer is not required to include in its system of supervision:
- (a) A producer's recommendations to consumers of products other than the annuities offered by the insurer; or



- (b) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.
- D. Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:
- (1) Truthfully responding to an insurer’s request for confirmation of the consumer profile information;
  - (2) Filing a complaint; or
  - (3) Cooperating with the investigation of a complaint.
- E. Safe harbor.
- (1) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this regulation. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection shall limit the insurance commissioner’s ability to investigate and enforce the provisions of this regulation.

**Drafting Note:** Non-compliance with comparable standards means that the recommendation or sale is subject to compliance with the requirements of this regulation.

- (2) Nothing in Paragraph (1) shall limit the insurer’s obligation to comply with Section 6C(1) of this regulation, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.
- (3) For paragraph (1) to apply, an insurer shall:
  - (a) Monitor the relevant conduct of the financial professional seeking to rely on Paragraph (1) or the entity responsible for supervising the financial professional, such as the financial professional’s broker-dealer or an investment adviser registered under federal [or state] securities laws using information collected in the normal course of an insurer’s business; and
  - (b) Provide to the entity responsible for supervising the financial professional seeking to rely on Paragraph (1), such as the financial professional’s broker-dealer or investment adviser registered under federal [or state] securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.
- (4) For purposes of this subsection, “financial professional” means a producer that is regulated and acting as:
  - (a) A broker-dealer registered under federal [or state] securities laws or a registered representative of a broker-dealer;
  - (b) An investment adviser registered under federal [or state] securities laws or an investment adviser representative associated with the federal [or state] registered investment adviser; or
  - (c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

**Drafting Note:** The requirement that a producer be “regulated and acting” as a broker-dealer, a registered representative of a broker-dealer, an investment adviser, an investment adviser representative or a plan fiduciary means that a producer who is not explicitly acting in compliance with the relevant comparable standards, as specified in Paragraph (4) below, is not eligible for this safe harbor and is subject to compliance with the requirements of this regulation.

- (5) For purposes of this subsection, “comparable standards” means:
- (a) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;
  - (b) With respect to investment advisers registered under federal [or state] securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 [or applicable state securities law], including but not limited to, the Form ADV and interpretations; and

**Drafting Note:** State-registered investment advisers in this safe harbor are included in brackets so that each individual state that implements this model regulation may determine whether to include the state-regulated investment advisers. Given the varying treatment of annuities, particularly variable annuities, under state law, the varying structures of state securities and insurance departments, and the varying levels of cooperation between the two agencies, this is a decision best made in each individual state.

- (c) With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

## **Section 7. Producer Training**

- A. A producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer’s standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B.
  - (1)
    - (a) A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
    - (b) Producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
  - (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits but may be longer.
  - (3) The training required under this subsection shall include information on the following topics:
    - (a) The types of annuities and various classifications of annuities;
    - (b) Identification of the parties to an annuity;
    - (c) How product specific annuity contract features affect consumers;
    - (d) The application of income taxation of qualified and non-qualified annuities;
    - (e) The primary uses of annuities; and
    - (f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.

- (4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- (5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this state and comply with the rules and guidelines applicable to producer continuing education courses as set forth in [insert reference to state law or regulations governing producer continuing education course approval].
- (6) A producer who has completed an annuity training course approved by the department of insurance prior to [insert effective date of amended regulation] shall, within six (6) months after [insert effective date of amended regulation], complete either:
  - (a) A new four (4) credit training course approved by the department of insurance after [insert effective date of amended regulation]; or
  - (b) An additional one-time one (1) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.
- (7) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to state law or regulations governing producer continuing education course approval].
- (8) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to state law or regulations governing producer continuing education course approval].
- (9) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.
- (10) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.
- (11) An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

**Section 8. Compliance Mitigation; Penalties; Enforcement**

- A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:
  - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer, an entity contracted to perform the insurer's supervisory duties or by the producer;
  - (2) A general agency, independent agency or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this regulation; and
  - (3) Appropriate penalties and sanctions.

- B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

**Drafting Note:** Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of Subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

**Drafting Note:** A state that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC *Unfair Trade Practices Act* (#880) or the state’s statute that authorizes the commissioner to impose penalties and fines.

- C. The authority to enforce compliance with this regulation is vested exclusively with the commissioner.

## **Section 9. Recordkeeping**

- A. Insurers, general agents, independent agencies and producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

**Drafting Note:** States should review their current record retention laws and specify a time period that is consistent with those laws. For some states this time period may be five (5) years.

- B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

**Drafting Note:** This section may be unnecessary in states that have a comprehensive recordkeeping law or regulation.

## **Section 10. Effective Date**

The amendments to this regulation shall take effect [X] months after the date the regulation is adopted or on [insert date], whichever is later.

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*Chronological Summary of Action (All references are to the Proceedings of the NAIC).*

2003 Proc. 3<sup>rd</sup> Quarter 17-18, 24-27, 32, 213 (adopted).

2006 Proc. 2<sup>nd</sup> Quarter 40, 90 (amended).

2010 Proc. 1<sup>st</sup> Quarter Vol. I 105-106, 117, 129-139, 146-159, 313 (amended).

2015 Proc. 1<sup>st</sup> Quarter, Vol. I 117-118, 131-134, 326-335, 431 (amended).

2020 Proc. Spring (amended).

**APPENDIX A**

**INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES  
Do Not Sign Unless You Have Read and Understand the Information in this Form**

Date: \_\_\_\_\_

**INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My”)**

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Business\Agency Name: \_\_\_\_\_ Website: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

National Producer Number in [state]: \_\_\_\_\_

**CUSTOMER INFORMATION (“You”, “Your”)**

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

**What Types of Products Can I Sell You?**

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- Fixed or Fixed Indexed Annuities
- Variable Annuities
- Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

- Mutual Funds
- Stocks/Bonds
- Certificates of Deposits

**Whose Annuities Can I Sell to You?**

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from: _____	

**How I'm Paid for My Work:**

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

- Commission, which is usually paid by the insurance company or other sources. If other sources, describe:  
\_\_\_\_\_.
- Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
- Other (Describe):\_\_\_\_\_.

**If You have questions about the above compensation I will be paid for this transaction, please ask me.**

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

*Drafting Note: This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.*

*Drafting Note: The acknowledgement and signature should be in immediate proximity to the disclosure language.*

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent (Producer) Signature

\_\_\_\_\_  
Date

**APPENDIX B**

**CONSUMER REFUSAL TO PROVIDE INFORMATION**

**Do Not Sign Unless You Have Read and Understand the Information in this Form**

**Why are You being given this form?**

You're buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent, broker, or company needs information about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives and situation. You may lose protections under the Insurance Code of [this state] if You sign this form or provide inaccurate information.

Statement of Purchaser:

- I **REFUSE** to provide this information at this time.
- I have chosen to provide LIMITED information at this time.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

**APPENDIX C**

**Consumer Decision to Purchase an Annuity NOT Based on a Recommendation**

**Do Not Sign This Form Unless You Have Read and Understand It.**

**Why are You being given this form?** You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, your financial situation, insurance needs and financial objectives.

If You sign this form, it means You know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of [this state].

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent/Producer Signature

\_\_\_\_\_  
Date



## SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

**SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION**

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**SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION**

**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

**\*Model Adoption refers to the 2010 version of the model. States that have citations identified in the Model Adoption column have laws substantially similar to the NAIC’s 2010 version of the model regulation.**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. ADMIN. CODE r. § 482-1-137 (2006/2016) (previous version of model).
Alaska		ALASKA ADMIN. CODE tit. 3, §§ 26.770 to 26.789 (2008/2014) (previous version of model); BULLETIN 2008-4 (2008); BULLETIN 2009-7 (2009).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. §§ 20-1243.01 to 1243.07 (2006/2017) (portions of previous version of model).
Arkansas		ARK. ADMIN. CODE §§ 054.00.82-1 to 054.00.82-10. (2004/2009) (previous version of model); Directive 2-2006; BULLETIN 11-2009 (2009); BULLETIN 5-2010 (2010).
California		CAL. INS. CODE §§ 10509.910 to 10509.918 (1990/2016) (previous version of model).
Colorado		3 COLO. CODE REGS. § 702-4:4-1-11 (2004/2011) (previous version of model).
Connecticut		CONN. AGENCIES REGS. §§ 38a-432A-1 to 38a-432A-8 (2005/2012) (previous version of model); LICENSING BULLETIN L-18 (2012).
Delaware		18 DEL. CODE REGS. § 1214 (2006/2017) (previous version of model).

**SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
District of Columbia		D.C. MUN. REGS. tit. 26A, §§ 8400 to 8499 (2010/2011) (previous version of model).
Florida		FLA. STAT. § 627.4554 (2004/2013) (previous version of model); FLA. ADMIN. CODE ANN. R. 69B-162.011 (2009/2014) (forms required).
Georgia		GA. COMP. R. & REGS. 120-2-94-.01 to 120-2-94-.10 (2006/2015) (previous version of model).
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. §§ 431:10D-621 to 431:10D-626 (2008/2012) (previous version of model); Memorandum 2011-2 (LC) (2011).
Idaho		IDAHO ADMIN. CODE r. 18.01.09.001 to 18.01.09.025 (2005/2013) (previous version of model); IDAHO CODE ANN. § 41-1940 (2005/2008) (portions of previous version of model and authority to adopt regulation).
Illinois		ILL. ADMIN. CODE tit. 50, §§ 3120.10 to 3120.90 (2007/2011) (previous version of model).
Indiana		760 IND. ADMIN. CODE 1-72-1 to 1-72-6 (2006/2015) (previous version of model); IND. CODE §§ 27-4-9-1 to 27-4-9-6 (2005/2007) (limited to seniors); § 27-1-15.6-19.5 (2011).
Iowa		IOWA ADMIN. CODE r. 191-15.72 to 191.15.78 (2006/2012) (previous version of model); IOWA ADMIN. CODE r. 191-15.8 (1963/2009) (life and annuity sales guidelines); 191-33.3 (1984/1999) (variable life); BULLETIN 2007-5 (2007); BULLETIN 2009-4 (2009).
Kansas		KAN. ADMIN. REGS. § 40-2-14a (2005/2013) (previous version of model).
Kentucky		806 KY. ADMIN. REGS. 12:120 (2007/2012); 806 KY. ADMIN. REGS. 9:220 (2011) (previous version of model).
Louisiana		LA. ADMIN. CODE tit. 37, Pt. XIII §§ 11701 to 37:11719 (Reg. No. 89) (2006/2019) (portions of previous version of model).

**SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Maine		917 ME. CODE R. § 02-031 (2007/2015) (previous version of model); ME. REV. STAT. ANN. tit. 24-A, § 2517 (1969/2005) (authority to adopt regulation).
Maryland		MD. CODE REGS. §§ 31.09.12.01 to 31.09.12.11 (2007/2011) (previous version of model); BULLETIN 2011-28 (2011).
Massachusetts		211 MASS CODE REGS. 96.01 to 96.10 (2016) (previous version of model).
Michigan		MICH. COMP. LAWS ANN. §§ 500.4151 to 500.4165 (2006/2013) (previous version of model).
Minnesota		MINN. STAT. ANN. §§ 72A.20 to 72A.2036 (2012/2014) (portions of previous version of model); MINN. STAT. ANN. §§ 60K.46 to 60K.56 (2012/2017) (portions of previous version of model); MINN. STAT. § 61A.021 (1985) (tying prohibited).
Mississippi		19 MISS. ADMIN. CODE. Pt. 2 R. §§ 18.01 to 18.11 (2013) (previous version of model); BULLETIN 2014-7 (2014).
Missouri		MO. CODE REGS. ANN. tit. 20, § 400-5.900 (2017) (previous version of model); MO. REV. STAT. § 376.671 (2010); MO. CODE REGS. ANN. tit. 20, § 400-1.020 (1984/2002); § 700-1.146 (2005/2016).
Montana		MONT. CODE ANN. §§ 33-20-141, 33-20-802 to 33-20-807 (2007/2017) (portions of previous version of model).
Nebraska		NEB. REV. STAT. §§ 44-8101 to 44-8109 (2006/2018) (previous version of model); BULLETIN CB-128 (2012).
Nevada		NEV. ADMIN. CODE §§ 688A.400 to 688A.475 (2005) (previous version of model).; BULLETIN 2006-004 (2006).
New Hampshire		N.H. CODE ADMIN. R. ANN. INS. 305.01 to 305.08 (2009/2014) (previous version of model); BULLETIN 14-036-AB (2014) (training requirement).

**SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
New Jersey		N.J. ADMIN. CODE §§ 11:4-59A.1 to 11:4-59A.6 (2013) (previous version of model); N.J. STAT. ANN. § 17B:25-20 (1981/2005) (limits maturity dates and surrender charges for annuities sold to seniors); §§ 17B:25-34 to 17B:25-42 (2008); BULLETIN 2009-12 (2009).
New Mexico	NO CURRENT ACTIVITY	
New York		N.Y. COMP. CODES R. & REGS. tit. 11, §§ 224.0 to 224.9 (2011/2018) (previous version of model); N.Y. COMP. CODES R. & REGS. tit. 11, §§ 225.0 to 225.3 (2013) (senior-specific certifications).
North Carolina		N.C. GEN. STAT. §§ 58-60-150 to 58-60-180 (2007/2009) (previous version of model); 11 N.C. ADMIN. CODE 12.0420 (1976/1992) (submit suitability form).
North Dakota		N.D. CENT. CODE §§ 26.1-34.2-01 to 26.1-34.2-05 (2007/2011) (previous version of model); N.D. ADMIN. CODE §§ 45-02-02-14 (1984/2001) (recommendations to consumers over age 65); § 45-04-04-07 (1984).
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO ADMIN. CODE 3901:6-13 (2010).	
Oklahoma		OKLA. ADMIN. CODE §§ 365:25-17-1 to 365:25-17-9 (2005/2007) (portions of previous version of model); BULLETIN 1-12-2012 (2012) (training requirement).
Oregon		OR. ADMIN. R. 836-080-0170 to 836-080-0193 (2011) (previous version of model).
Pennsylvania		40 PA. CONS. STAT. §§ 627-1 to 627-8 (2010/2018) (previous version of model).
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island		230-20 R.I. Code R. § 25-1.1 to 25-1.10 (2011/2018) (previous version of model); BULLETIN 2011-2 (2011) (training requirement).

**SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
South Carolina		S.C. CODE ANN. REGS. 69-29 (2011) (previous version of model).
South Dakota		S.D. CODIFIED LAWS. §§ 58-33A-13 to 58-33A-27 (2008/2012) (previous version of model); S.D. ADMIN. R. § 58-28-33 (2003); BULLETIN 2008-5 (2008).
Tennessee		TENN. COMP. R. & REGS. §§ 0780-01-86-.01 to 0780-1-86-.09 (2008/2015) (previous version of model); BULLETIN 5-22-2013 (2013).
Texas		TEX. INS. CODE ANN. §§ 1115.001 to 1115.102 (2007/2011) (previous version of model).
Utah		UTAH ADMIN. CODE R590-230 (2004/2012) (previous version of model).
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		14 VA. ADMIN. CODE §§ 5-45-10 to 5-45-50 (2017) (previous version of model).
Washington		WASH. ADMIN. CODE § 284-17-265 (2012) (portions of previous version of model); § 284-23-390 (2012) (portions of previous version of model); WASH. REV. CODE § 48.23 (2009) (previous version of model).
West Virginia		W. VA. CODE R. §§ 114-11B-1 to 114-11B-8 (2008/2011) (previous version of model).
Wisconsin		WIS. STAT. § 628.347 (2004/2015) (previous version of model).
Wyoming		WYO. ADMIN. CODE 044.0002.64 §§ 1 to 9 (2014/2018) (previous version of model).

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## SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

### Proceedings Citations

Cited to the Proceedings of the NAIC

In 2000, the NAIC adopted a white paper recommending the establishment of suitability standards for life insurance and annuities. Shortly thereafter a working group was appointed to draft standards. The purpose of the model act and regulation developed by that working group was to regulate the activities of insurers and producers who made recommendations to consumers to purchase certain life insurance and annuity products to ensure that insurers and producers made suitable recommendations based on relevant information obtained from the persons who purchased life insurance and annuity products. **2003 Proc. 3<sup>rd</sup> Quarter 27.**

A model act and regulation were adopted by the working group and forwarded to the parent committee. Because of the lack of support for a wide-reaching suitability standard, and because none had existed before in most states, the parent committee recommended a narrow model that addressed the area of most concern to regulators—the sale of annuities to seniors. A new model was drafted in early 2003 and comments solicited. Associations, consumer groups and others participated. The process resulted in a new model that was adopted by the NAIC membership. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

A commissioner proposed amending the Life Insurance and Annuities (A) Committee charges to include reviewing and changing the Senior Protection in Annuity Transactions Model Regulation to address the suitability issue with regards to all annuity transactions. **2006 Proc. 1<sup>st</sup> Quarter 38.**

The Life Insurance and Annuities (A) Committee adopted revisions to this model. A commissioner stated that he had urged reopening the Senior Protection in Annuity Transactions Model Regulation to expand the model's suitability protections to consumers of all ages, not just those 65 years of age or older. Since the model's adoption in 2003, there was an increasing number of complaints from those under 65. Committee members expressed support for the proposed revisions particularly in light of proposed legislation being considered by the California Legislature, Senate Bill 192. **2006 Proc. 1<sup>st</sup> Quarter 322.**

The joint Executive Committee/Plenary adopted the proposed revisions to the Senior Protection in Annuity Transactions Model Regulation. The revisions expand the model's protections to all consumers, not just those 65 years of age or older. Since the model's adoption in 2003, there had been an increasing number of complaints from those under 65. **2006 Proc. 2<sup>nd</sup> Quarter 39.**

The Suitability of Annuity Sales Working Group discussed the guidelines that they believed should be part of the revisions. **2008 Proc. 3<sup>rd</sup> Quarter 6-49 to 6-51.**

The Working Group discussed a draft of the proposed revisions to the model. Regulators discussed how California had not adopted the current model because of its concerns with its delegation and other provisions. The Working Group discussed priorities for revising the model and held a panel discussion on the proposed revisions. **2008 Proc. 4<sup>th</sup> Quarter 6-9 to 6-11.**

The Life Insurance and Annuities (A) Committee discussed options as whether to amend the existing Suitability in Annuity Transactions Model Regulation. **2009 Proc. 2<sup>nd</sup> Quarter 6-4.**

The Working Group discussed several issues related to revising the scope of this model as well as issues that needed to be addressed. **2009 Proc. 2<sup>nd</sup> Quarter 6-29 to 6-30.**

The Life Insurance and Annuities (A) Committee decided to affirmatively pursue revising the model regulation rather than continuing to discuss the issue of developing a model bulletin. **2009 Proc. 3<sup>rd</sup> Quarter 6-4.**

The Suitability of Annuity Sales (A) Working Group adopted a draft of revisions to the Suitability in Annuity Transactions Model Regulation. **2009 Proc. 4<sup>th</sup> Quarter 6-3.**

The Life Insurance and Annuities (A) Committee adopted the revisions to the Suitability in Annuity Transactions Model Regulation. When voting, one state reserved its right to amend the model if it was presented for adoption as a regulation or law. **2010 Proc. Spring 6-4 to 6-6.**

## SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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The joint Executive Committee/Plenary adopted proposed revisions to the Suitability in Annuity Transactions Model Regulation. These revisions made three core changes to the model: (1) clarified that the insurer is responsible for compliance with the model's requirements even if the insurer contracts with a third party; (2) required a review of all recommended annuity transactions; and (3) established producer general training and specific-product training requirements. **2010 Proc. Spring 3-3.**

#### Section 1. Purpose

A. There was some consensus to prepare a draft that started with the National Association of Securities Dealers (NASD) standards in place for variable products. An interested party said the primary issue was whether incorporation of the NASD standards meant that regulators were also incorporating the whole supervisory structure of the NASD. **2003 Proc. 2<sup>nd</sup> Quarter 220.**

A regulator said the earlier draft prepared by the working group had a checklist of specific items to be reviewed but now that the standard was more general, he suggested removing the word "minimum" before standards so that the regulation would just say that it set forth standards and procedures. An interested party said that the wording of Section 1 could imply that insurers did not have a responsibility if they did not make recommendations and the committee agreed to reword that section to make this clearer. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

To address continuing concerns on the part of interested parties that suitability might be determined based on later circumstances, the committee added the phrase "at the time of the transaction" to Subsection A. **2003 Proc. 2<sup>nd</sup> Quarter 220.**

B. An interested party asked the committee to consider adding specific language in Section 1 about a private cause of action. Regulators agreed to add a Subsection B referring to a private cause of action. Another regulator said this already appeared in the Unfair Trade Practices Act and so it was not needed in this regulation. The committee agreed to repeat the language as it was written in the Unfair Trade Practices Act in this document. The regulator suggested adding a drafting note that if a state had different language in its Unfair Trade Practices Act, it should use that instead. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

#### Section 2. Scope

Extensive discussion took place on whether the model should cover all recommendations or just recommendations that resulted in a sale. Ultimately the drafters settled on a focus on recommendations that resulted in sales. They expressed concern that all recommendations be suitable, but recognized the record-keeping burden that would be imposed by extending the model to cover all recommendations. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

An interested party said the draft was so general in scope that it was confusing. The interested party said that the phrase, "transaction or a series of transactions" was too broad. If a producer who was not licensed with Company A recommended that an individual surrender his annuity and buy a Company B product, Company A had no ability to judge the suitability of that recommendation. A commissioner said that, if a person exchanged an annuity for a universal life insurance policy, the language recommended by the interested party would be clearer. Another interested party asked if this would cover a situation when a person surrendered his annuity and bought a mutual fund. The interested party said that, in that case, neither the securities nor insurance regulators would have jurisdiction when someone surrendered an annuity. **2003 Proc. 3<sup>rd</sup> Quarter 212.**

Once the model was narrowed to apply only to sales of annuities to seniors, one new issue was whether the rules should apply to all transactions involving an annuity, or just a transaction where an annuity was being purchased. The language settled on referred to a purchase or exchange of an annuity. **2003 Proc. 3<sup>rd</sup> Quarter 28-29.**

A commissioner distributed a draft of proposed revisions to the Senior Protection in Annuity Transactions Model Regulation. The Life Insurance and Annuities (A) Committee voted to expose the draft for comment. The Committee intended to expedite consideration of these revisions. **2006 Proc. 1<sup>st</sup> Quarter 324.**

## SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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#### Section 3. Authority

There were many controversial items raised during the drafting of the initial model draft. The working group discussed whether to use the Unfair Trade Practices Act as authority for development of a regulation. Interested parties urged the working group to develop language specific to suitability of sales. This discussion also extended to whether to require a pattern of conduct, as in the Unfair Trade Practices Act, or whether a single violation was sufficient to invoke penalties. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

#### Section 4. Exemptions

Once the model was narrowed to apply only to sales of annuities to seniors, many of the issues that previously had been controversial no longer applied, such as many of the exemptions included in the earlier draft. However one new issue was whether the rules should apply to all transactions involving an annuity, or just a transaction where an annuity was being purchased. The language settled on referred to a purchase or exchange of an annuity. **2003 Proc. 3<sup>rd</sup> Quarter 28-29.**

The Working Group deleted the exemptions that were in this Section. **2008 Proc. 3<sup>rd</sup> Quarter 6-6.**

A. An interested party suggested a number of technical changes to the draft. One suggestion was to add “pursuant to this regulation” following “based on information collected from the senior consumer” in Section 4A. A regulator said that if the producer used information he already knew, it would fall outside the scope of the regulation and that was not the drafters’ intent. The interested party responded that the purpose of that language was to reflect the fact that the type of information gathered from the consumer should be relevant to determining suitability in order to fall under this regulation. Regulators decided to include the language suggested by the interested party in Section 4A. **2003 Proc. 3<sup>rd</sup> Quarter 213.**

The drafting group discussed how the regulation would apply to direct writers. An interested party said that a recommendation should be based on an exchange of information. Direct writers sent out information with minimal knowledge of the person receiving it. If the model applied to them, direct writers will have to change the way they did business. A regulator opined that in direct response solicitations, the advertising just described the product; it does not “advise.” Another interested party said the earlier draft prepared by the working group exempted direct response if no direct recommendation was made. An interested party said all advertising could be a recommendation. That is why the words “specific personalized” needed to be in the draft referring to recommendations. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

The Suitability of Annuity Sales (A) Working Group discussed deleting the words “by insurer.” **2009 Proc. 4<sup>th</sup> Quarter 6-7.**

The Working Group added the word “insurer” in response to discussions with the Securities and Exchange Commission (SEC) to clarify what type of direct response solicitation would be exempt from the model’s provisions. **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

B. The committee decided to put exemptions in this regulation similar to those that had been in the draft act considered by the earlier working group. A regulator pointed out that the draft included an exemption for variable annuities, which should be removed. The committee discussed the various types of contracts included in Subsection B and decided that they were all appropriate exemptions. A regulator asked why prepaid funeral contracts were being excluded. Another regulator responded that these were smaller face amount products, not generally in the area of abuses. The drafters considered adding an exemption for structured settlements. A regulator pointed out that this type of contract did not generally result from a recommendation by an insurer or producer but agreed that it did not hurt to have the exemption there. Another interested party requested that the committee consider an exemption for sophisticated purchasers. An interested party said the National Association of Securities Dealers (NASD) suitability standards did not have an exemption for sophisticated purchasers, for good reason. The committee declined to add it to this draft. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

A regulator expressed concern about deleting the language concerning the exemption for ERISA plans. Another regulator said that the basis for developing the revisions to the model was due to problems some states had experienced with unsuitable sales involving annuities sold on an individual basis, not on a group basis to employer groups. **2009 Proc. 4<sup>th</sup> Quarter 6-8 to 6-11.**

**SUITABILITY IN ANNUITY TRANSACTIONS  
MODEL REGULATION**

**Proceedings Citations**

Cited to the Proceedings of the NAIC

**Section 5. Definitions**

An interested party pointed out that the earlier draft from the working group included a definition of “suitable.” He asked if that should be added here. A regulator said using the standards from the NASD addressed that issue. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

The Working Group added new definitions for “continuing education credit” and “continuing education provider because these terms were used in Section 7. The Group deleted the definition of “qualified staff.” **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

B. An interested party asked whether the reference in Section 5B should be “rebuttable presumption” instead of “reasonable presumption.” **2008 Proc. 3<sup>rd</sup> Quarter 6-7.**

D. A commissioner said he would like to finish the recommendation definition so that the wording for Section 1 could be clearer. An interested party suggested inserting the word “specific personalized” before recommendations. The commissioner said he was not in favor of the suggestion to add “specific personalized” to recommendations to relieve direct writers from any obligation. A regulator said that “personalized” could mean that, as long as the individual’s name is not on any advice, it is not personalized. This created a loophole. Another regulator said this suggestion had been brought up to the former working group over and over again and was always rejected. An interested party said that a recommendation should be based on an exchange of information. Otherwise the model was too broad. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

The committee spent a considerable amount of time discussing the definition of recommendation in Subsection D. Several interested parties suggested adding language to the definition of recommendation to clarify that it applied only to recommendations that resulted in a sale. A regulator asked if the NASD rules applied to all recommendations. An interested party responded that in theory they did, but in practical terms, only recommendations that resulted in a sale were acted upon because those were the transactions that caused harm. A regulator pointed out that the rule keeping requirements applied only to recommendations that resulted in a sale. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

A commissioner asked how the NASD defined recommendations. An interested party said that the NASD did not have a legal definition but gave guidance to members on various issues related to their recommendations. A regulator asked if that created any problems and the interested party responded that it gave the NASD flexibility to look at the circumstances. The regulator asked if a specific definition such as contained in the NAIC’s model might cause a problem with variable products. The interested party said that was a possibility. **2003 Proc. 2<sup>nd</sup> Quarter 216.**

A regulator asked how this regulation would operate if a recommendation were made in a group situation. A commissioner said that, before any transaction took place, members of the group would have to sit down individually with the producer to complete an application. The regulator said that it might be difficult for regulators to decide if a seminar or education program was really a recommendation. The commissioner said the producer would not be relieved of his duty to get an application and information from each person who decided to purchase the product. An interested party suggested that it might be wiser to follow the lead of the NASD and not define a recommendation. Another interested party suggested including the word “individual” to avoid the question of whether advertising was a recommendation. A regulator asked if the NASD considered a group presentation to be a recommendation. An interested party responded that an analysis would be done on a case-by-case basis. Another interested party said that, after a general sales presentation to a group, an individual recommendation must be made as to a specific product and amount. A regulator said that a recommendation would not take place until that point. An interested party said adding the NASD rules addressed many of the concerns about these types of situations. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

An interested party expressed concern with this Section. A commissioner suggested that language from the North American Securities Administrators Association (NASAA) rule be added specifically stating that the proposed model’s provisions do not limit the commissioner’s authority to enforce existing provisions of law. **2008 Proc. 3<sup>rd</sup> Quarter 6-7.**

An interested party urged the Life Insurance and Annuities (A) Committee to delete Section 5D. After discussion, the Committee requested additional information from the interested party. **2008 Proc. 3<sup>rd</sup> Quarter 6-15 to 6-16.**

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**Section 5** (cont.)

E. An industry trade association suggested raising the age when someone was a “senior consumer” to 75. A regulator said that, with people moving toward early retirement, the age should be 55. If the committee wanted to consider an adjustment, he would argue for a lower age. Another regulator said 65 was a compromise already. The scope was narrowed from covering all transactions. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

A regulator asked whether the definition of “qualified staff” would be revised. **2009 Proc. 3<sup>rd</sup> Quarter 6-90.**

H. The Working Group added a new definition for “replacement.” The definition was derived from the definition of “replacement” in the Life Insurance and Annuities Replacement Model Regulation. **2009 Proc. 4<sup>th</sup> Quarter 6-7.**

The Working Group revised the definition of “suitability information” to more appropriately reflect that buying an annuity is a financial planning decision, not necessarily an investment decision. **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

**Section 6. Duties of Insurers and Insurance Producers**

While the model was being drafted, one of the most controversial issues was balancing the responsibilities of the insurers and the producers. The working group that first drafted a model was convinced that the proper balance was to require responsibility for both. The working group draft required the insurer to have standards for suitable recommendations in place and a system designed to make sure that producers knew and followed those standards. The producer had a responsibility to follow the standards set by the insurer. One significant addition to the draft prepared by the parent committee was to add standards for mitigation of penalties if the producer and insurer worked to right any wrongs done to a consumer. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

An interested party opined that one of the fundamental issues was the duties of insurers and producers. A commissioner asked what would happen if a recommendation was made and then six months later the individual decided to make the purchase. An interested party said the presumption in the draft was that, if the purchase was the result of the recommendation, the responsibility to determine suitability would still be there. The commissioner said that seemed to him to be a good approach. The interested party said the case-by-case analysis of the NASD was an appropriate approach. Another commissioner agreed that regulators should allow themselves the latitude to consider suitability issues on a case-by-case basis without specific detail. **2003 Proc. 2<sup>nd</sup> Quarter 217.**

B. The committee agreed to insert “resulting from a recommendation” following “transaction” in subsection B. **2003 Proc. 3<sup>rd</sup> Quarter, 213.**

C. A regulator criticized the draft by saying that if a customer refused to provide information, the entire model was not applicable to that transaction. He suggested adding a new Paragraph (2) so that the insurer or producer was still charged with responsibility. If it was clear that the producer should have not gone forward, it was still not an appropriate sale. **2003 Proc. 2<sup>nd</sup> Quarter 152.**

The Working Group discussed whether the model should prohibit an insurer from issuing an annuity recommended to a consumer unless the annuity is suitable for the consumer based on the information provided at the time of sale. After discussion, the Group decided to revise this section. **2009 Proc. 1<sup>st</sup> Quarter 6-32.**

A regulator suggested revising the language related to penalties to pattern the language used in the Unfair Trade Practices Act. Another regulator suggested that the Working Group not make a decision on this recommendation, but add it to a list of recommendations for additional discussion at a later date. **2009 Proc. 3<sup>rd</sup> Quarter 6-89.**

The Working Group clarified this section to illustrate that an insurer is responsible for the suitable sale of its products and is responsible for ensuring that the model’s requirements are followed by its producers and any third-party contractors. **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

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**Section 6** (cont.)

D. A commissioner asked whether upfront review of each transaction was needed. He had not been in favor of the earlier model developed by the working group because it opened up insurers to possible litigation. He preferred a requirement that did not add lots of expense. A regulator expressed concern with the language that ultimately became a part of Subsection D. He said he did not believe that it relieved insurers of liability and he did not think it was necessary. He said the draft as it existed did not imply a case-by-case review. He expressed concern that the language was overly broad in saying that a company was relieved of all responsibility if it had sampling, testing or audit. The commissioner said this phrase described the process that an insurer used to meet its obligations and should not be interpreted any other way. **2003 Proc. 2<sup>nd</sup> Quarter 218.**

The regulator asked if it was clear that the insurer was still ultimately responsible and asked why the second sentence was needed. Another regulator opined that it was there to recognize the different distribution systems. An interested party said that the drafters of this additional language did not intend to suggest that this would relieve insurers of their obligations. She opined that this type of flexibility would go a long way toward alleviating concerns within the industry about how to address suitability under different distribution systems. **2003 Proc. 2<sup>nd</sup> Quarter 218.**

Determining what standards to use for determining suitability resulted in extensive discussion. Insurers requested more specific guidance on how their standards should look so that they were reasonably assured that they were adequate. Regulators discussed using membership in an organization as a standard, but rejected that approach. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

A commissioner opined that “assuring recommendations are supervised” was less explicit than requiring a “system to supervise.” Another commissioner said she expected a system demonstration that would assure her that recommendations were supervised, so she did not see much difference between the two wording alternatives. The chair disagreed, saying that there was a shade of difference in the meaning and that a “system” was a stronger requirement. The director said that giving the responsibility to an insurer, general agent or independent agency gave the insurer an opportunity to say it was not the responsible party. **2003 Proc. 3<sup>rd</sup> Quarter 31-32.**

An interested party asked who was ultimately responsible if an insurer contracted with a third party. A regulator responded that the company was ultimately responsible. Another regulator responded that the insurer would probably make the third party partially responsible. The interested party said this was a very important issue to him and he wanted to make sure that everyone had the same understanding. He did not want the companies to say that because they monitored, they had no responsibility. He said he believed that the first sentence in Subsection D gave the insurer a responsibility that was clear. What if in the sampling, testing or audit it was discovered that the insurer had not found what was needed? Another regulator said that in this case the company system was inadequate. **2003 Proc. 2<sup>nd</sup> Quarter 218.**

An interested party expressed concern with Section 6D which provides that neither an insurer nor a producer has any obligation to a consumer related to any recommendation if the consumer refuses to provide relevant information, but there is a reasonable basis to believe the recommendation is suitable. The interested party said that this provision was inappropriate because it gave immunity to the producer or insurer for recommending and selling an unsuitable product. **2009 Proc. 3<sup>rd</sup> Quarter 6-90.**

A regulator outlined her concerns with Section 6D, which would allow an insurer to issue an annuity when no recommendation is made. The Working Group discussed, and ultimately rejected, her suggestion. **2009 Proc. 4<sup>th</sup> Quarter 6-8.**

A regulator expressed concern with the wording of Section 6D(1)(b). After discussion, the committee made a grammatical correction. **2010 Proc. Spring 6-5.**

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**Section 6** (cont.)

E. There was some consensus to prepare a draft that started with the National Association of Securities Dealers (NASD) standards in place for variable products. An interested party said the primary issue was whether incorporation of the NASD standards meant that regulators were also incorporating the whole supervisory structure of the NASD. **2003 Proc. 2<sup>nd</sup> Quarter 220.**

A regulator suggested a change to Section 6E. He said the draft as written may not be clear in its intent to give a safe harbor for compliance with the NASD rules. He suggested a different paragraph that requires the commissioner to apply guidance from the NASD in coming to a conclusion about compliance. **2003 Proc. 2<sup>nd</sup> Quarter 152.**

The committee considered a suggestion that would grant a safe harbor for compliance with the NASD Rules of Conduct for variable annuities. A regulator opined that it was not necessary, but an interested party said it reduced the possibility of conflict. The regulator asked whether it would remove the ability for the insurance department to take action for violations. Another regulator said that the parties wanting to take shelter in this safe harbor would still have to demonstrate that they were in compliance with those rules. Another interested party suggested adding a sentence to the effect that nothing in this section would detract from a state's ability to enforce the regulation. Another interested party asked if a state can determine whether a person has failed to comply with NASD rules. Another regulator said most states' securities laws include a provision that any violation of NASD or Securities Exchange Commission (SEC) rules or any other federal law will be a violation of state law. An interested party said that if the company complied with the interpretations of the NASD, they had utilized the safe harbor. **2003 Proc. 2<sup>nd</sup> Quarter 218.**

The Working Group struggled with the revisions to this section to address the situation when the consumer refuses to provide relevant information or decides to enter into an annuity transaction that is not recommended. **2009 Proc. 4<sup>th</sup> Quarter 6-10.**

F. The Working Group revised this Section in order to clarify the type of review necessary to meet the requirements of this provision. **2009 Proc. 4<sup>th</sup> Quarter 6-7.**

The Working Group added recordkeeping requirements to provide guidance to insurers on what type of information must be retained related to recommendations for any future market conduct examinations. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

A commissioner suggested that the committee restore Section 6F(1)(d). This provision required insurers to maintain reasonable procedures to independently confirm consumer suitability information. The commissioner also suggested that 6F(2)(b)(ii), concerning an insurer's supervision of contractual performance, be restated, rather than deleted. Another commissioner acknowledged the concerns but stated that the Working Group had been working on the revisions for more than a year, during which time these issues were discussed thoroughly. **2010 Proc. Spring 6-4 to 6-5.**

G. The Working Group revised this Section to make clear the specific responsibilities for insurers and insurance producers under the model for satisfying the training requirements and ensuring suitable sales. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

H. The Working Group revised this Section in order to clarify its application. **2009 Proc. 4<sup>th</sup> Quarter 6-7.**

A regulator reiterated his concerns about the safe-harbor language in Section 6H. After discussion, the group agreed to draft additional clarifying language for the drafting note to address these concerns. **2009 Proc. 4<sup>th</sup> Quarter 6-8.**

**Section 7. Insurance Producer Training**

The Working Group discussed whether the model should retain the requirement that insurers verify that producers take NAIC-developed ethics and suitability continuing education and verify NAIC-administered producer competency examination certification requirements. **2009 Proc. 1<sup>st</sup> Quarter 6-33.**

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#### Section 7 (cont.)

The Working Group discussed whether the model should outline and limit the methods an insurer must use to verify producer compliance with continuing education requirements and examination requirements. The Working Group decided to form a Training Subgroup to address this issue. **2009 Proc. 1<sup>st</sup> Quarter 6-33.**

The Working Group discussed whether the model should require an insurer to take steps to ensure that producers are trained on each offered product. The Working Group assigned this task to the Training Subgroup. **2009 Proc. 1<sup>st</sup> Quarter 6-33.**

An interested party expressed concern that this section included no grace period or period of time for producers to come into compliance. The interested party suggested that the Working Group consider developing a model bulletin. A regulator stated that interested parties should focus on revising the model regulation. **2009 Proc. 3<sup>rd</sup> Quarter 6-90 to 6-91.**

The Working Group revised this Section to reflect Iowa's training requirements for indexed annuities and other states' training requirements for long-term care insurance partnership policies. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

#### Section 8. Compliance Mitigation; Penalties

One significant addition to the draft prepared by the parent committee was to add standards for mitigation of penalties if the producer and insurer worked to right any wrongs done to a consumer. **2003 Proc. 3<sup>rd</sup> Quarter 28.**

A regulator said he had a concern about this section because it required an insurer only to take remedial action when it got caught. He suggested changing the word "remedial" to "corrective" to require the company to make a change to prevent future occurrences. An interested party said this section was ambiguous because it did not tell an insurer what type of action to take. He asked if being in compliance with a state's "free look" provision was sufficient, for example. The regulator said it depended on the facts and circumstances of the case. Another regulator said that if the insurer did not resolve the issue, there will be a negotiation with the insurance department and the corrective action would be worked out together. The committee agreed to accept Section 7 with a reference to corrective action. **2003 Proc. 2<sup>nd</sup> Quarter 219.**

One state provided suggestions for amendments to make this section stronger. An interested party said the extensive amendments changed the concepts of corrective action. Another interested party asked what it meant to take "corrective action where appropriate." Another interested party said that if an inappropriate sale occurred, the insurer would work to determine the nature of the situation and may need to refund the money or change some aspect of the contract. An interested party asked if an insurer would be amenable to that type of corrective action when it found out from other sources, such as a complaint filed with the insurance department. A commissioner said the action would also include termination of the producer who made an inappropriate recommendation. The commissioner said he looked at the model as a hammer to encourage companies to make the consumer whole. The interested party suggested language that would say when an insurer discovered someone had purchased an unsuitable annuity, the consumer would be put back in the right position if either the insurer or the producer did not meet his responsibility under the regulation. The commissioner said the purpose of this regulation was to encourage companies to make the consumer right. He would assume that corrective action included putting the person back in the condition he should have been. **2003 Proc. 2<sup>nd</sup> Quarter 153.**

The Working Group added a new subsection that gives the commissioner the discretion to assess appropriate penalties for violations of 6D. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

#### Section 9. [Optional] Recordkeeping

An interested party suggested changing the section from saying that the insurer shall maintain records to say that the insurer shall make them available to the commissioner. Regulators agreed with the suggested change. **2003 Proc. 2<sup>nd</sup> Quarter 219.**



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**Section 9** (cont.)

An interested party expressed concern with Section 9A(2)(b), which required an insurer to provide each contracting FINRA member broker-dealer with information and reports maintained under Section 7 that are reasonably appropriate to assist the broker-dealer to effectively carry out its supervision responsibilities under the contract. The Working Group requested additional information on this issue. **2009 Proc. 1<sup>st</sup> Quarter 6-32 to 6-33.**

**Section 10. Effective Date**

The Working Group decided to set an effective date for six months after the date the revisions were adopted by a state. **2009 Proc. 4<sup>th</sup> Quarter 6-11.**

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*Chronological Summary of Action*

*September 2003: Model adopted.*

*June 2006: Model amended.*

*March 2010: Model amended.*

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