

New Chair on the Block Discusses Reconstructing the Suitability Model

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Ohio Department of Insurance Director Jillian Froment, the new chair of the Annuity Suitability Working Group (Working Group), invited regulators and interested parties to build the required standard of care foundation for the Suitability in Annuity Transactions Model Regulation (Suitability Model) at a June 20 in-person meeting. During the meeting, Chair Froment used the Iowa Insurance Division's May 30 proposed draft revisions to the Suitability Model as the building blocks for the discussion. Chair Froment sought to reach consensus on the four obligation pillars of Iowa's Best Interest proposal — care, disclosure, conflict of interest, and documentation — as well as other structural pieces of Iowa's draft. While all agreed on the four pillars and reached consensus on many of the other pieces, the Working Group agreed that it needed to go back to the drawing board on several of the structural components.

Best Interest

As Chair Froment reviewed Iowa draft's requirement to act in the best interest of the consumer, New York's Deputy Commissioner James Regalbuto asserted that using language "without placing the producer's interest ahead of the consumer's interest" does not constitute best interest as "only the interest of the consumer" should be considered. Others thought this would be unattainable by producers. Deputy Commissioner Regalbuto posited that the Working Group could go forward with the standard as written, as long as "best interest" was not used. Commissioner Doug Ommen urged that "best interest" should be used in light of the SEC's Regulation Best Interest and the current marketplace.

Care Obligation

Commissioner Ommen explained that Iowa's draft reconstructed the suitability obligation into an elevated "professional standard" under which producers are required to know the products they

recommend and know their customers. Iowa's draft includes specific processes to take place and requires the exercising of professional judgment in making a recommendation to consumers. By avoiding the SEC's facts and circumstances approach, Iowa's draft seeks to clarify the expectations on insurers and producers. Several questions remained on the actual configuration, including:

- Whether the producer should act with prudence?
- How will it be determined if the producer acted reasonably?
- How will it be determined if the annuity was appropriate for the consumer — “best suited” or “addresses the consumer’s insurance needs and financial benefit”?

Disclosure Obligation

The regulators noted that Iowa's draft includes disclosure on:

- The producer and the producer-client relationship.
- The product being recommended.
- The basis of the recommendation and any conflicts of interest that exist in connection with the recommendation. Chair Froment posited that the disclosure obligation is intended to ensure that the consumer has the information needed to act on a recommendation. The Working Group discussed whether certain disclosures should be made “up front,” similar to the SEC's Relationship Summary, and whether other disclosures should be made at the time of the recommendation or thereafter.

Conflict of Interest Obligation

The Working Group agreed that transaction-based compensation involves inherent conflicts of interest, but care should be taken not to eliminate this type of compensation. Commissioner Ommen explained that Iowa's draft requires conflicts of interest to be avoided or managed, primarily through disclosures. Many asserted that the proposed required disclosure is too detailed. Chair Froment also pointed out that a subsequent call would be needed on what is a conflict of interest and what is required if there is a conflict of interest.

Documentation Obligation

The documentation obligation would support that a producer acted in the best interest of each consumer and would be done contemporaneously or shortly following the transaction. Regulators considered the need for improved documentation of the recommendation discussions to facilitate reviews of consumer complaints, regulatory inquiries, and enforcement actions.

Supervision

The Working Group's discussions focused on whether the supervision requirement should require elimination of sales contests and should prevent producers from purposely limiting the products they make available.

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While Chair Froment was the new kid on the block, she fostered constructive discussions on the proposed Suitability Model, building consensus on numerous points and deferring the more difficult conversations for later building sessions. Chair Froment expects to hold three calls prior to the 2019 NAIC Summer Meeting.

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