Annuity

NORTH AMERICAN
A Sammons Financial Company

NAIC **Model #275**

A compliance blueprint

Introduction and Purpose

Over the past two years, the National Association of Insurance Commissioners (NAIC) has been working through revisions to Model #275, known as the *"Suitability in Annuity Transactions"* model regulation. The need for such revisions arose from a desire to align state rules more closely with the SEC's *"Regulation Best Interest,"* which was adopted in 2019. State regulators at the NAIC finalized their revisions to Model #275 in early 2020 and individual states are now beginning to adopt these new revisions. Under new Model #275, producers have several new obligations, and insurers likewise have new supervisory requirements. Note that at the outset, North American will take a phased approach to compliance with the new model, only requiring compliance with the model in those states that have fully adopted it. For many states, the old version of the suitability rule and suitability standard remain unchanged. However, as states continue to adopt the new model throughout 2021, North American (and the industry at large) may decide to apply it nationwide, so it is important to familiarize yourself with the new requirements that are likely coming your way.

The purpose of this **NAIC Model #275 Compliance Blueprint** is to help you, our valued partner, understand your new obligations under the newly revised Suitability in Annuity Transactions Model Regulation. It is intended to give you a roadmap of the rule and also explain its impact on you and your business. Note that we'll soon be releasing our **Doing business with North American blueprint** as well, which will operate as a "cheat sheet" of sorts in tandem with this Compliance Blueprint. Why two documents? Our reason for this is simple. We want to give you the best resources available to help you do business with us in a compliant manner. Once you have read through and understand this Compliance Blueprint, you can set it aside for safekeeping and reference as needed. But the Doing business with North American blueprint may be a piece you want to keep nearby until you have grown comfortable with the rule, especially because it includes important information about new not-in-good-order (NIGO) requirements for business submission to North American. We're designing both documents in a concise, to-the-point, yet comprehensive manner that we hope will prepare you for doing business under this new rule. In short, we hope these documents, taken together, create a one-stop-shop for understanding new Model #275 and what it means to deliver for your customers under a "best interest" standard. Also, we believe that with a few new compliance steps, your business will continue to thrive under these new rules – and we look forward to partnering with you to get there.

Note: If you are affiliated with a broker-dealer, please ask how the broker-dealer intends to implement this new rule. As you'll see in the ***Safe Harbor*** *section below, broker-dealers have options when it comes to supervising annuity recommendations, including leveraging Regulation Best Interest in lieu of Model #275. This will vary by broker-dealer.*

Best Interest Standard

You might be asking yourself how a new "best interest" standard differs from a suitability standard – and how that new standard will impact the way you do business today. Specifically, the Purpose section of the rule states that producers are required to *act in the best interest of the consumer when making a recommendation of an annuity*. We know the vast majority of producers already act in the best interest of their consumers when making a recommendation of an annuity, so when it comes to compliance with the new standard, as with any new rule, the devil is really in the details. The good news is that the NAIC in drafting the rule provided a bit of a compliance roadmap for how to satisfy this standard. It really boils down to two new components:

1. FINANCIAL INTEREST TEST. The Duties section of the rule states that a producer, in making a recommendation, ***must not place the producer's or the insurer's financial interest ahead of the consumer's interest***. This creates a new measurement that was not in the previous suitability model that requires you to be conscious of your financial interest in a recommendation and be careful not to put that interest ahead of the consumer when making a recommendation.

2. SATISFY FOUR KEY OBLIGATIONS. The Duties section further states: ***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***. Each of these four new obligations will be discussed further below.

Key Takeaway: The new "best interest" standard has two new components that differentiate it from the suitability standard: (1) you must not place your own financial interest ahead of the consumer, and (2) you must satisfy four new obligations of care, disclosure, conflict of interest, and documentation.

A few additional notes on Best Interest.

By and large, satisfaction of those two components makes up the new best interest standard. But the NAIC regulators did not stop there. They actually took steps to clarify that the best interest standard is limited in some respects. For instance, they noted that a "best interest" standard does not mean a "fiduciary" standard, nor does it mean that you'll need to go get additional licensure or offer a broader suite of products to comply. The NAIC further provided that the standard is limited to circumstances known at the time the recommendation is made, and that the rule does not require the producer to provide ongoing monitoring (unless acting in a fiduciary capacity). In this regard, the NAIC wanted to make it clear that your business model is not going to be turned upside down under this rule. With some important tweaks to your point-of-sale process as well as some training on your new best interest obligations (care, disclosure, conflict of interest, and documentation), you should be able to get comfortable with the new rule relatively quickly.

Producer Best Interest Obligations

As referenced above, the new Model #275 requires the producer to comply with a best interest standard by satisfying four key obligations:

Care Obligation → **Disclosure Obligation** → **Conflict of Interest Obligation** → **Documentation Obligation**

These four obligations represent the bulk of a producer's compliance with the new model, and will be the new guiding light for satisfying a best interest recommendation. Each of these obligations is discussed in detail below, with some important takeaways noted.

I. CARE OBLIGATION

The CARE obligation is comprised of **four key steps**, as illustrated below. The good news is that most likely, these steps will look familiar to the process you follow today. To comply with the CARE obligation, the producer must exercise "reasonable diligence, care and skill" to:

Step one — **Know the consumer's financial situation and objectives**

Step two — **Understand your available product recommendation options**

Step three — **Have a reasonable basis to believe recommendation "effectively addresses" consumer need**

Step four — **Communicate basis or bases of the recommendation**

The first two steps in the CARE obligation should look familiar as they are likely part of your process today under the suitability standard. However, the third and fourth steps are technically new, so let's dive into those. Step three replaces language from the suitability standard which previously said that the producer must have *"reasonable grounds"* to believe the recommendation is *"suitable."* The new language removes *"suitable"* and replaces it with a new requirement to 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."* It is important to take note of this new *"effectively addresses"* standard in the CARE obligation, as well as the requirement to consider the whole transaction over the life of the product. As for step four, there is a new requirement to *"Communicate the basis or bases of the recommendation"* to the consumer. Note that the NAIC did not state that this communication must be done in writing, but we believe putting it in writing would be a best practice, with an additional best practice to retain this communication in your records (as discussed further below in the DOCUMENTATION obligation).

The CARE obligation provides some additional clarifying information for compliance, including the following:

The producer must make reasonable efforts to obtain consumer profile information from the consumer.	As part of the recommendation, the producer must consider characteristics of the insurer, product costs, rates, benefits and features – though no individual factor should be considered in isolation.	The rule does not require the recommendation of the lowest one-time or multiple occurrence compensation structure.

Important Change Regarding Replacements. As it relates to replacements, the CARE obligation includes some important requirements that may be new to you. In particular, it notes that the producer shall consider the whole transaction, including (1) whether the consumer will incur a surrender charge, be subject to a new surrender period, lose existing benefits, or be subject to additional fees and charges; (2) whether the replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product, and (3), whether the consumer has had another annuity replacement in the preceding 60 months. Though a few states have already been operating under this new replacement standard, this language will now apply to all replacements going forward.

Key Takeaway:

The CARE obligation requires a few new point-of-sale compliance steps, including the requirement to (1) know the consumer's financial situation and objectives, (2) understand the producer's available product offerings, (3) have a reasonable basis to believe the recommended option effectively addresses consumer's needs, and (4) communicate the basis or bases of the recommendation to the consumer (preferably in writing as a best practice). In addition, replacements have a higher bar going forward, including the requirement to consider the whole transaction and whether the replacing product will "substantially benefit" the consumer over the life of the product.

II. DISCLOSURE OBLIGATION

The new DISCLOSURE obligation is made up of three parts: (1) a new Producer Disclosure Form, (2) a potential disclosure of cash compensation (if requested by the consumer), and (3) the requirement to inform the consumer of annuity features. On the whole, this new obligation will require some new point-of-sale process changes for the producer. Each disclosure is discussed below.

PRODUCER DISCLOSURE FORM

Following in the SEC's footsteps, the NAIC created a new producer disclosure that must be provided to the consumer **prior to the recommendation** which lays out the producer's relationship with the consumer as well as the producer's available product offerings and a description of how the producer is paid. The NAIC created a generic version of this form as "Appendix A" to the new Model #275, which North American will provide to producers on our new NAIC #275 microsite and in our application packets. We recommend using this generic form, or one you create, so long as it is *"substantially similar"* to Appendix A. It is important to note that the Producer Disclosure Form must be signed by you and the consumer, with one copy retained by you and one left with the consumer. As a best practice, we recommend providing it to the consumer at your first meeting so that there are no questions as to the timing of when the disclosure was provided. North American will be requiring submission of a copy of this new *Producer Disclosure Form* for all new sales in those states that have adopted the new model. For more information about specific North American business requirements, be sure to reference the **Doing business with North American blueprint**.

CASH COMPENSATION DISCLOSURE

The Producer Disclosure Form (Appendix A) includes the following required statement: *"If you have questions about the above compensation I will be paid for this transaction, please ask me."* If the customer (or customer's designated representative) requests more information about your compensation, you are required under the new Model #275 to disclose (1) a reasonable estimate of the amount of cash compensation you will receive under the sale (which may be stated as a range of amounts or percentage, particularly because before the time of recommendation, you may not know the exact amount) and (2) whether the compensation is a one-time or multiple occurrence amount (and if multiple occurrence, the frequency of that amount). A best practice would be to provide this disclosure of compensation in writing (with a copy saved to your records).

DISCLOSURE OF ANNUITY FEATURES

The new Model #275 requires the producer to have a reasonable basis to believe the consumer has been informed of various features of the annuity. The good news is that we believe the current product disclosures North American requires today satisfy this obligation, though we certainly encourage you to walk through all product features in detail with the consumer.

Key Takeaway:

The DISCLOSURE obligation requires a new Producer Disclosure Form, which must be provided to the consumer prior to the recommendation. This means that you may have to adjust your point-of-sale practice to provide this form early in the sales process, perhaps even at the first consumer meeting. The Producer Disclosure Form should be signed by both the consumer and you, with a copy left with the consumer and another retained by you for your records. You will then be required to submit a copy of the Producer Disclosure Form to the company with application. Note: if the consumer asks for additional information about compensation, you are required to disclose such information (preferably in writing).

III. CONFLICT OF INTEREST OBLIGATION

The new CONFLICT OF INTEREST obligation requires a producer to *"identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest."* Model #275 further defines "material conflict of interest" to mean 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."*

Note, the NAIC recognized that merely receiving cash compensation and/or non-cash compensation does not in and of itself create a material conflict of interest. Instead, the NAIC was focused on identification of financial conflicts such as an ownership interest in a firm or company, or a family member or spouse serving in a role at an insurer. As a best practice, if you have a question as to whether a financial interest is a conflict, disclose it.

Key Takeaway:

The CONFLICT OF INTEREST obligation requires you to consider any potential conflicts of interest that could influence the impartiality of your recommendation and further requires you to either identify and avoid the conflict(s) or manage and disclose the conflict(s) to the consumer.

IV. DOCUMENTATION OBLIGATION

The new DOCUMENTATION obligation requires you to document a written record of any recommendation you make as well as the basis for such recommendation. Note that the NAIC defined *"recommendation"* broadly in the new Model #275, including recommendations that were *"intended to result or do result"* in a purchase, exchange, or replacement of an annuity. As a result, regulators expect you to make a specific documentation each time you make a recommendation and include in such documentation the basis/bases for that recommendation. You might recall from the CARE obligation above that there is a requirement to communicate the basis/bases of a recommendation to the consumer, and we noted that it would be a best practice to do so in writing. If you do follow this best practice and retain a copy of the information you provide to the consumer as required by the CARE obligation, you have likely satisfied this DOCUMENTATION obligation as well. North American will not require submission of such documentation with application, but may request you to produce this documentation from time to time as part of our compliance sampling process.

There are additional producer requirements under the DOCUMENTATION obligation if a consumer refuses to provide consumer profile information, but it will not impact North American as we currently don't allow a sale in the absence of such information.

Note also that under the new Recordkeeping section in Model #275, the producer is required to maintain or be able to make available records of all the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendation. The Recordkeeping requirement in tandem with the DOCUMENTATION obligation makes it clear that regulators expect producers to maintain a documentation system that houses all of the above information for recall as necessary.

Key Takeaway:

The DOCUMENTATION obligation requires you to maintain in your files any and all recommendations made to the consumer as well as the basis/bases for the recommendation(s). As part of the new Recordkeeping requirement, we recommend developing a good documentation system to house all customer information and forms/records for each recommendation made.

Additional Producer Requirements

In addition to the above best interest obligations, NAIC Model #275 includes additional requirements that must be considered for compliance. The remaining requirements of note are explained below:

ADDITIONAL PRODUCER INVOLVEMENT. The new NAIC Model #275 provides that the rule is intended to apply to every producer who has exercised material control or influence in the making of a recommendation and who has received direct compensation as a result of the recommendation (regardless of whether the producer has had any direct contact with the consumer). The purpose of this new requirement is to bring into scope any contributing producers who may be involved with the sale but not necessarily in front of the consumer. The NAIC carved out activities such as providing or delivering marketing materials, product wholesaling, back office support or general supervision, so it really comes down to whether the additional producer (1) had material control or influence and (2) received direct compensation. If so, that producer must also comply with all of the above requirements.

PRODUCER TRAINING. For the most part, all previous training requirements survive in the new NAIC Model #275, including all product and CE training requirements. However, there is one big change of note: a requirement to take a training course related to your new obligations under NAIC Model #275. This can be accomplished one of two ways: (1) take a new four credit annuity training course (which will incorporate the new Model #275 into it) or, if you have already completed a required four credit annuity training course in the past, then (2) a one-time one credit training course on appropriate sales practices, replacement, and disclosure requirements under the newly amended NAIC #275. Satisfaction of this training requirement must occur within six months of the state's effective date of the new rule. North American will be tracking producer training compliance on this (but will not NIGO business until six months after the state's effective date of the model). These training courses are going to be designed and managed by outside training vendors (e.g., RegEd, LIMRA) and will be uniform across the industry.

SAFE HARBOR. In the previous version of the model, there was a safe harbor provision for broker-dealers who supervise under FINRA standards. As noted above, the new NAIC Model #275 is drawn from the SEC's *Regulation Best Interest*. Because of this new standard, the NAIC revised the safe harbor to note that a broker-dealer, RIA or plan fiduciary may rely on their own regulatory framework (in lieu of Model #275) if they satisfy a *"comparable standard"* test. The NAIC made it clear that compliance with the SEC's *Regulation Best Interest* is considered a *"comparable standard,"* so broker-dealers can choose to forgo #275 compliance in favor of the SEC rule if they prefer. This would mean the broker-dealer would run all annuity business through *Regulation Best Interest* compliance, even fixed and indexed annuities, which may theoretically be outside the scope of the SEC rule. If you're affiliated with a broker-dealer, you should ask the broker-dealer about their plans for compliance with NAIC Model #275. If they choose not to supervise fixed and indexed annuities under their *Regulation Best Interest* framework (or another comparable standard), supervision and oversight will run through North American.

NEW FORMS. More to come on this, but at the outset, you should know that there are several new forms that will be introduced as a result of the new NAIC Model #275. First, the "Suitability Form" will need to be slightly revised and re-labeled as the *"Consumer Profile Form."* Second, North American will be requiring a new *Producer Attestation Form* that will require (1) review and attestation by the producer and consumer at the time of sale and (2) submission of the executed form to the company with all new business. Third, North American will be requiring submission of the new *Producer Disclosure Form* (Appendix A to the NAIC Model) with all new business in those states that have adopted the new model. For more on new forms and other North American compliance expectations, be sure to review the new **Doing business with North American blueprint**.

New Insurer Supervision Requirements Impacting Producers

While the producer certainly has several new obligations for compliance under new NAIC Model #275 as outlined above, it is important to note that the insurer, acting in a supervision role, also has a number of new requirements for compliance which may impact the producer from time to time. They are briefly discussed below.

NEW REVIEW STANDARD. Similar to producers, the insurance company has a new standard of care it must use in reviewing each submitted application. Specifically, there must be a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. We must establish and maintain procedures for such reviews.

DETECTING NONCOMPLIANCE. As referenced above, we have a new requirement to establish and maintain reasonable procedures to detect recommendations that are not in compliance with the new model's requirements. This means that the company is required to create a system of review to ensure producers are satisfying their own obligations, which is one reason why we will require the new *Producer Attestation Form* as well as the new *Producer Disclosure Form* as noted above. In addition, we may, from time to time, conduct random sampling requests of our producers as well as surveys, interviews or confirmation letters.

CONFIRMATION OF DISCLOSURE RECEIPT. We also have a new requirement to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required under the rule (e.g., *Producer Disclosure Form*, basis for the sale). As noted above, we'll be utilizing the *Producer Attestation Form* and collecting the *Producer Disclosure Form* as well as conducting some post-issue sampling to comply with this requirement.

ELIMINATION OF SALES CONTESTS BASED ON A SPECIFIC ANNUITY PRODUCT. The new Model #275 requires the insurer to establish procedures to identify and eliminate any sales contests, bonuses, and non-cash compensation that are based on the sale of a specific annuity product within a limited period of time. This means that short-term, single-product promotional programs will no longer be permitted under this rule. However, the NAIC provided that the intent of this requirement is not to eliminate general incentive programs regarding the sales of a company's products with no emphasis on a particular product.

In closing...

While the new NAIC Model #275 certainly creates a number of changes for producers, we believe that with appropriate training and attention they will be simple to implement and will not fundamentally change the way you do business. We are supportive of these revisions, and will adopt them on a phased approach as they are considered and implemented in the states. We will be providing additional resources and information to you as new states adopt the rule or if our procedures change.

Note also that we strive to be best in class when it comes to providing you with compliance assistance when new regulation strikes. We hope this Compliance Blueprint helps you understand this new rule, and that you will consider North American as your partner in navigating business in this new best interest world. Don't hesitate to reach out to the company with questions.

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