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Rosanne Mead
Assistant Commissioner
Iowa Division of Insurance
330 Maple Street
Des Moines IA 50319-0065

Carolyn Johnson
General Counsel
National Association of Insurance Commissioners
2301 McGee, Suite 800
Kansas City MO 64018-2604

RE: Life Insurance & Annuities Suitability Model Regulation (Draft 1/6/01)

Dear Mesdames Mead and Johnson,

Thank you for your close consideration of the draft suitability regulation developed by ACLI members and the comments communicated to you by ACLI Vice President Linda Lanam on 19 December 2000. The ACLI appreciates that many revisions hospitable to our concerns were incorporated into the current draft NAIC regulation, including several important definitions, the role of the Insurance Marketplace Standards Association, and a safe harbor for NASD requirements.

Please be aware that Ms. Lanam has entrusted to me the role of chief liaison to the NAIC for this matter. You may be aware that, after 13 years with the American Insurance Association, I assumed duties at the ACLI late last year. I look forward to working with you in the months ahead; please do not hesitate to call upon me for assistance or information. This letter comments upon the captioned draft model regulation by section as follows, and then concludes with several general comments.

Section 1. Purpose and Scope

Amend the first sentence to substitute the word “customer” for “consumer.”

Comment: The word “customer” is used throughout the rest of the draft model regulation. It is also a defined term, while “consumer” is not a defined term. This minor change will improve the internal consistency of the draft.

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Amend the second sentence as follows: “The goal of this regulation is to ~~ensure~~ assure that insurers etc...”.

Comment: This lexical change would track the wording of the Replacement Model Regulation.

Section 3. Definitions

Amend Definition A for “Customer” as follows:

- A. “Customer” means an individual who seeks to obtain; or obtains ~~or has obtained~~ an insurance product etc....

Comment: The duties of the model regulation regarding suitable recommendations attach at the point of sale rather than after the applicant or consumer has become a customer. The wording change avoids creating confusion about the correct time frame for compliance evaluation.

Amend Definition F for “Registered contract” as follows:

“Registered contract” means an variable annuity insurance contract or ~~a variable life~~ insurance policy subject to *etcetera*....

Comment: The word “variable” should be deleted because contracts such as modified guaranteed annuities are not variable contracts under state law, but they are often sold with a prospectus subject to the prospectus delivery requirements of the Securities Act of 1933. Brokers who sell contracts subject to these prospectus delivery requirements are governed by the NASD suitability rules. The proposed amendment clarifies that the definition not only covers variable life products but will also cover modified guaranteed annuities if they are SEC-registered products.

Amend Definition G “Relevant information” as follows:

- G. “Relevant information” may includes, but is not limited to etc....

Comment: The current definition contemplates that information beyond what is specifically identified may be relevant for evaluation of suitability but, by not using “may”, inadvertently suggests that every item of information specifically identified is relevant. In fact, one or more of the specific items may be irrelevant for any particular suitability determination. The amendment simply clarifies that “relevant information” is not a static list but requires professional evaluation and will vary from product to product. The next proposed amendment addresses this same issue and emphasizes this important point.

Add Note to follow Definition G “Relevant information” as follows:

[Drafting Note: Because of the differing nature of the multitude of life insurance and annuity products covered by this Regulation, the information which should be obtained and considered in making a recommendation for any particular product will vary significantly from product to product. For example, the information that should be considered for a term life policy would be significantly different from that needed for a market value adjusted annuity.]

Comment: The note emphasizes the point made in the previous suggested amendment, i.e., that the definition of “Relevant information” should admit a flexibility of interpretation as to what information is relevant for any particular product or situation based on the producer’s professional judgment.

Amend Definition I “Suitable recommendation” as follows:

I. “Suitable recommendation” means a recommendation...based upon relevant information obtained from a potential ~~purchaser~~ customer and that ~~meets~~ assists in meeting the ~~purchaser’s~~ customer’s insurable needs or financial objectives.

Comment: This amendment in the first place confirms the subject of the recommendation to be the “Customer”, as defined. Second, the amendment clarifies that any suitable recommendation can only assist in meeting the needs of the customer, since no product can meet all the “needs” (an undefined term) of a customer, and more than one product or approach might be appropriate for the customer’s circumstances existing at the time of the transaction. The standard should be that a product is consistent with or assists the customer in meeting his or her needs; not in meeting them as such.

Section 4. Exemptions

Amend sub-section A as follows:

- ~~A. Direct response solicitations where there is no recommendation by a producer or agent of an insurer;~~

Comment: The proposed amendment is to strike the descriptive phrase as being redundant with the already-defined term “direct response solicitation” which definition is consistent with the NAIC model Replacement regulation.

Section 5. Duties of Insurers

Amend sub-section A as follows:

- A. An insurer shall establish, maintain and ~~enforce~~ confirm policies and procedures ~~reasonably designed to ensure~~ designed to provide reasonable assurance that its producers ~~make suitable recommendations~~ will assist the customer purchase a

suitable life insurance or annuity product with respect to the insurer's product offerings.

Comment: First, the use of the word "enforce" is misplaced to describe the relationship and duties of insurer and producer, while "confirm" more accurately conveys the nature of the insurer-producer relationship. Second, the lexical change from "ensure" to "provide assurance" would track the wording of the Replacement Model Regulation and Section 1 above. The final, substantive amendment clarifies that the customer is not relieved of responsibility in making his or her decision. Further, the insurer's duty toward its producer in assisting the customer purchase a suitable product is limited to those products it offers – the producer or customer may, in fact, determine that more than one or none of the insurer's products are appropriate to assist the customer.

Amend sub-section B as follows:

B. An insurer's policies...shall include at least the following:

...

- (2) Providing each producer with ~~the insurer's~~ written guidelines or determining that each of its producers has written guidelines as to established by the producer concerning what is relevant information that should be obtained from a customer ~~prior to~~ in making recommendations to a customer; and...

Comment: The proposed amendment provides flexibility for the insurer and producer to negotiate as a matter of their relationship which entity will establish the relevancy guidelines. Many large producer organizations likely will establish their own relevancy guidelines and insist that the insurers they represent defer to them. This is desirable, inasmuch as the individual producers within a large brokerage or agency could otherwise be confronted with so many different, insurer-specific guidelines as to undermine their utility for providing the customer suitable recommendations. By the same token, we believe that, under Section 5C, insurers are ultimately responsible for assuring that the producer is using such guidelines.

Amend sub-section C as follows:

C. An insurer may contract with a third party...to deliver information...described in Subsection B(1) and (2) and (3). An insurer...shall perform a reasonable inquiry to assure that the third party is performing all required duties ~~required by this regulation~~.

Comment: The proposed amendment first clarifies that a third party may be employed by the insurer to liaise with the producer in establishing the insurer's relevancy guidelines. This will allow carriers to delegate this responsibility to specialty contractors, just as an insurer might retain an independent payroll or accounting contractor or other specialist. The second part of the proposed amendment is a non-substantive, grammatical simplification.

Section 6. Duties of Producers

Amend sub-section B as follows:

- B. Producers shall have reasonable discretion, consistent with policies and guidelines required under Section 5B(2), to determine what relevant information is relevant or necessary appropriate for any specific recommendation or insurance transaction. The producer is entitled to rely upon information provided by the customer as being complete and accurate.

Comment: The proposed amendment knits by cross-reference the duties of producers and insurers together into a reasonable whole, and grammatically improves the language of the determination standard to one of propriety rather than necessity in acknowledgment that relevant information may be different from customer to customer but what is important is that whatever information used is appropriate. The proposed amendment then provides that the producer is entitled to complete and accurate information from the customer as a basis for making suitable recommendations.

Add Note to follow sub-section B as follows:

[Drafting Note: Because of the differing nature of the multitude of life insurance and annuity products covered by this Regulation, the information which should be obtained and considered in making a recommendation for any particular product will vary significantly from product to product. For example, the information that should be considered for a term life policy would be significantly different from that needed for a market value adjusted annuity.]

Comment: The note emphasizes the point that the Regulation should admit a flexibility of interpretation as to what information is relevant for any particular product or situation based on the producer's professional judgment.

Regarding sub-section C, the ACLI recommends that the NAIC determine an appropriate number of years for relevancy information documentation and expressly include it, with the goal of achieving uniformity in this particular requirement among the states.

Amend sub-section D as follows:

- ... (1) Collection and consideration of appropriate, relevant information; and...

Comment: The proposed amendment will increase customer protections by assuring that any compliance evaluation will look to whether the information collected is not merely relevant, but appropriate for the suitability recommendation that was made.

Section 8. Severability

The ACLI respectfully recommends this section be deleted in its entirety.

Comment: Severability clauses are appropriate for legislation or statutes which encompasses different subjects, provide for different requirements, or impose different duties upon different parties. The proposed regulation, on the other hand, addresses a single subject in a closely self-referential matter. It is likely that the invalidity of any provision or term of the regulation could result in substantially new or different requirements and impositions.

Section 9. Effective Date

Comment: The NAIC should make clear that the Effective Date should allow a reasonable time for insurers and producers to (1) prepare and negotiate guidelines and responsibilities and (2) implement the new systems that will be necessitated under the regulation before compliance is required.

General Comments

The ACLI repeats its belief that it is neither necessary nor advisable to amend the UTPA to provide authority for the proposed regulation. Some states likely provide their regulators sufficient authority to promulgate an adopted model regulation already, while sufficient diversity among state UTPAs exists to raise concerns with the potential application of different penalties and enforcement standards. If, however, states believe that enabling legislation is needed, we would be happy to work with you to craft an appropriate model upon completion of the model regulation.

Separately, the Council has not yet, as a matter of policy, agreed the regulation under consideration is warranted, desirable or appropriate. The concepts behind the regulation go to the heart of our members' businesses; they are receiving focused consideration by several ACLI committees and will be the subject of many more discussions in the months ahead. These discussions will reach out to representatives of the producer community in an effort to forge a consensus on what might be accomplished cooperatively by all interested parties.

Finally, though, the ACLI wishes to express its gratitude for your congenial management of the model's development. Your willingness to consider our positions on a number of important points is much appreciated. It will be in good spirit that we will join you at the Valentine's Day meeting.

Sincerely,

/s/

MICHAEL LOVENDUSKY
Senior Counsel