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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

Senate Bill 572

Relating to: suitability of annuity contracts and granting rule-making authority.

By Senator Wirch; cosponsored by Representatives Cullen, Molepske Jr., Turner and A. Williams.

February 26, 2010 Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

March 9, 2010 **PUBLIC HEARING HELD**

Present: (4) Senators Wirch, Holperin, Hopper and Lazich.
Absent: (1) Senator Plale.

Appearances For

- Robert Wirch — Senator, 22nd Senate District
- Guenther Ruch — Office of the Commissioner of Insurance
- John Wheeler — NAIFA - Wisconsin
- John Hendrick — Coalition of Wisconsin Aging Groups

Appearances Against

- None.

Appearances for Information Only

- Connie O'Connell — Wisc. Council of Life Insurers

Registrations For

- Sandy Lonergran — Elder Law Sections State Bar of Wisconsin

Registrations Against

- None.

Registrations for Information Only

- None.

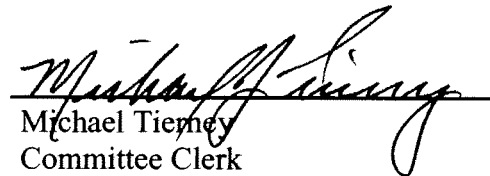
March 16, 2010 **EXECUTIVE SESSION HELD**

Present: (5) Senators Wirch, Plale, Holperin, Hopper and
Lazich.
Absent: (0) None.

Moved by Senator Plale, seconded by Senator Wirch that **Senate
Bill 572** be recommended for passage.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and
Lazich.
Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0


Michael Tierney
Committee Clerk

March 5, 2010

To Members of the Wisconsin State Senate:

Senate Committee on Small Business,
Emergency Preparedness, Technical
Colleges and Consumer Protection

Senate Committee on Judiciary,
Corrections, Insurance, Campaign
Finance Reform and Housing

Re: SB 572
Annuity Suitability Legislation (Recreating Wis. Stat. Sec. 628.347)

Dear Senators:

My name is Barbara J. Becker. I am unable to attend the Senate Committee on Small Business, etc. hearing on March 9 on the annuity suitability legislation. I wish to submit this statement in support of the legislation. I understand that the draft legislation may be of interest to the Senate Committee on Judiciary, etc, as well, and for that reason I am sending this statement to members of both Senate Committees.

I am a lawyer in private practice, practicing part-time of counsel to Becker & Hickey, SC in Milwaukee, but I submit this statement only for myself in my individual capacity. My practice deals mainly with the elderly and disabled, but I have also handled family law cases during my 32 years of practice. I am the treasurer of the Elder Law Section of the State Bar of Wisconsin and have been an active member of the board for many years, but I submit this statement only for myself and not for that organization at this time. I state these affiliations to indicate that I have not only my own personal experiences with clients but also those of many other lawyers that have helped to form my opinions.

In early 2008 I was appointed to the Life Advisory Council of the Office of the Commissioner of Insurance in Wisconsin because of my involvement with the elder law section of the State Bar of Wisconsin. I represent the consumer point of view. I was appointed later that year to serve on a committee to study and formulate legislation to regulate the sale of annuities, particularly annuity suitability and disclosure. The committee had representatives of the life insurance industry, both insurance companies and insurance agents, and two consumer representatives. The committee held a series of meetings working on the issues over a period of about 6 months. The committee reached a consensus sent its recommendations to Commissioner Dilweg. The Commissioner also received feedback from a committee of the National Association of Insurance Commissioners and submitted his recommendations to the Wisconsin

committee. That committee approved the proposal and recommended it to the Commissioner.

As you know, SB 572 would revise the insurance statutes to provide additional requirements for insurance sales people and insurance companies to meet to ensure that the sale of an annuity to a consumer is suitable. It requires that information must be solicited from the prospective purchaser about his financial and tax status. The sales person and insurer must consider whether the annuity will replace another annuity, what the consumer's risk tolerance, liquidity needs, financial horizon and intended use of the annuity are. The bill requires that the consumer be informed of such things as whether a surrender charge or increased fees will be incurred for replacing an existing annuity.

The bill further requires training before a license to sell annuities will be issued. It requires the agent to make reasonable efforts to obtain the suitability information from the consumer and prohibits the insurer from issuing an annuity that the agent has recommended unless it is reasonable to believe that the annuity is suitable for the consumer. It expands on the insurer's responsibility for monitoring and supervising annuity transaction recommendations.

Under the bill, the insurance commissioner retains authority to promulgate rules and to reduce or eliminate penalties for violations if corrective action is taken promptly for the consumer.

Over the years of my practice, I have recurrently seen clients with annuities that are entirely unsuitable for their circumstances. Clients who were 70, and even 80, years old with health problems who had reason to believe that they would need liquidity to meet their increasing health care needs have been sold deferred annuities with substantial penalties for surrender of these annuities within 10, and in two cases, 15 years after the purchase of the annuity. I have had a half a dozen older client who were sold a deferred annuity by a bank teller based who told them the interest rate on the annuity was higher than the person could obtain with a certificate of deposit and should replace the maturing CD. The teller either neglected to tell the customer or the customer failed to comprehend that he or she would lose 7 or 10 or 15% of the purchase value (and any interest that would have earned) if the customer wanted to get funds out of the annuity in during the long surrender penalty period.

I have also seen that elderly client do not understand certain features of these annuities, such as investment in subaccounts that mimic mutual funds with the risk of loss from the investments, or equity indexed annuities. Clients have expressed surprise when I have told them that they would have to pay income taxes on the earnings on the annuity when the funds were withdrawn, not understanding the difference between tax-deferred and tax-free income.

This bill will give the insurance commissioner additional tools to regulate the sale of annuities to consumers. In addition to the training and supervision requirements, the sales agent must solicit information from the prospective purchaser upon which to base a recommendation for or against the purchase of the annuity, which in itself provides the consumer with more protection. I have observed that my clients usually are offended if asked for personal financial information or health information and family circumstances in the annuity sales transaction, and yet this information is critical to the suitability analysis. By being asked the questions and then hearing the explanation of why the questions must be answered, the consumer will be given additional insight into whether this is, in fact, a good way to invest the money and whether the consumer is willing to take on the risks involved.

I believe that this legislation provides important consumers protection, particularly for the elderly, and that my clients will benefit greatly from this legislation. I urge you to vote in favor of this bill.

Thank you for the opportunity to express my views.

Very truly yours,
Barbara J. Becker
9745 N. Lake Drive
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COMMITTEES:
APPROPRIATIONS
JUDICIARY
SPECIAL COMMITTEE
ON AGING

March 8, 2010

Senator Robert Wirth, Chair
Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and
Consumer Protection
Room 316 South
State Capitol
Madison, WI 53707

Dear Chairman Wirth,

Thank you for authoring Senate Bill 572, a piece of legislation relating to suitability of annuity contracts. Increased consumer protections are necessary as more people turn to private investment options for their retirement income.

As chairman of the U.S. Senate Special Committee on Aging, I understand the vulnerability of individuals working with a third party to plan for their future financial needs and goals. As such, I introduced the Senior Investor Protection Act. Among other things, the Act provides grants to states that take steps to enhance the protection of seniors against misleading false credentials and designations. One of the requirements for receiving a grant is state adoption of the stronger suitability standards reflected in the proposed new National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation. I am encouraged by your introduction of SB 572, which will help Wisconsin protect seniors and meet the necessary eligibility criteria for grant dollars under my proposal.

Senate Bill 572 requires insurers to take responsibility for the sale of their annuity products. At a time when individuals feel pressure to stretch their retirement dollars further, it is critical that they be able to trust their agents and insurers to only present options that are suitable for their financial situation.

Sincerely,


U.S. Senator Herb Kohl

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Wisconsin Council of Life Insurers

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Allianz Life Insurance Company of North America
American Equity Investment Life Insurance Co.
Ameriprise Financial Services, Inc.
American Family Life Insurance Company
Aviva USA
Catholic Knights
CUNA Mutual Insurance
Equitable Reserve
Guardian Life Insurance Company of America
Genworth Financial
MetLife
National Guardian Life Insurance Company
Northwestern Mutual
Prudential Life Insurance
State Farm
Thrivent Financial for Lutherans
WEA Trust

MEMORANDUM

TO: HONORABLE MEMBERS OF THE SENATE SMALL BUSINESS,
EMERGENCY PREPAREDNESS, TECHNICAL COLLEGES, AND
CONSUMER PROTECTION NSURANCE COMMITTEE

FROM: CONNIE O'CONNELL 

SUBJECT: ASSEMBLY BILL

DATE: MARCH 9, 2010

On behalf of the Wisconsin Council of Life Insurers, we appreciate the opportunity to provide comment on Senate Bill 572 (SB 572) related to the supervision of annuity sales. This legislation is based on the National Association of Insurance Commissioners' (NAIC) Draft Revisions to the Suitability in Annuity Transactions Model Regulation. Although we are not taking a position on this bill, we strongly recommend that the Committee support uniformity in the regulation of annuity suitability. Therefore, should the Committee choose to advance SB 572, we respectfully request that the bill remain consistent with the NAIC draft model. In crafting this draft, the NAIC has attempted to pattern the regulations applicable to fixed annuity sales to be more consistent with the federal rules related to variable annuities.


NAIC Model Acts

One of the key functions provided by the NAIC is the development of uniform model laws. The NAIC brings together the collective experience and knowledge of regulators across the country to hear from consumer and industry representatives on a range of issues affecting the insurance industry. The NAIC has set aside funds to pay expenses for consumer representatives to attend the meetings and provide voice to the deliberations. Representatives of the insurance industry are also well represented during these discussions.

Not all insurance issues have been found to be appropriate for model law development. Different demographics, geographic risks and consumer expectations have resulted in some insurance regulations having more variability from state to state. This is particularly true for property and casualty insurance products. In these instances, either models are not created or the NAIC establishes minimum national standards which provide more room for state variability. In contrast, regulators have found greater need for uniformity in areas such as long term care insurance and life insurance. There are considerable benefits to consumers when consistent regulation is applied to insurance products that they will hold for a longer period of time, through changing life circumstances. Not only is there consistent application of rules from state to state, but prices are lower for consumers when the same product can be sold in many different states without variation. Consistency in regulation is also important to life insurance companies who spend many millions of dollars every year complying with state insurance regulation. Compliance with one uniform system is significantly less expensive than modifying systems or developing new systems for what are often minor state variations. A lack of uniform regulation increasingly places life insurance company products at a competitive disadvantage as compared to other types of financial institutions who offer similar products.

Importance of Uniformity

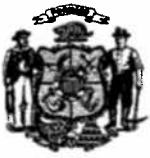
We strongly encourage that Wisconsin's annuity suitability laws be consistent with the NAIC model. When the NAIC created the first annuity suitability model, Wisconsin was the first state to adopt the provisions in 2003 Wisconsin Act 261. Wisconsin's law was consistent with the NAIC model and set the stage for more uniform national adoption.

Wisconsin is again at the forefront of legislation affecting the supervision of annuity sales. SB 572 has been drafted and introduced even before final NAIC action. It is expected that the NAIC will take final action on the model during its meeting in late March. We strongly recommend that if Wisconsin moves forward in advance of NAIC final action, that SB 572 be amended as necessary to create uniformity between Wisconsin law and the model adopted by the full NAIC membership. We further request that no amendments be included that are inconsistent with the NAIC model. 

Conclusion

The Wisconsin Council of Life Insurers respectfully requests that if the Wisconsin Legislature should choose to modify Wisconsin's annuity suitability supervision requirements that these changes be consistent with NAIC model language.





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

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**Testimony of Commissioner Sean Dilweg
To the Senate Committee on Small Business, Emergency Preparedness,
Technical Colleges, and Consumer Protection
Senate Bill 572
March 9, 2010**

Chairman Wirch and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 572, relating to suitability of annuity contracts. This proposal reflects recent modifications to the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation. Additionally, Senator Herb Kohl has included state adoption of the NAIC model as a requirement for securing grants under his Investor Protection Act.

SB 572 updates Wisconsin's suitability of annuity sales statute to improve consumer protections by strengthening insurer supervision over suitability determinations in annuity sales and requiring that agents are adequately trained.

The number of complex annuity products in the market today continues to grow. The consumer base for these products is also increasing as more baby-boomers plan for retirement and the product is highlighted on the national level as an investment tool worth considering. In January, President Obama encouraged people to consider annuities to transform savings into guaranteed future income. With more consumer attention to this product, it is critical that measures are in place to ensure consumers are sold annuity products that meet their financial needs and goals. Current law has proven inadequate in preventing unsuitable annuity sales.

Unsuitable sales result from improper or abusive sales practices as well as inadvertent circumstances where agents lack a full understanding about the complex annuity products they are selling. In both cases, companies must be held accountable for the actions of their agents. Gaps in current law give companies wide latitude in maintaining procedures for supervising sales which has led to inadequate supervisory procedures and company responsibility. For example, a common practice among insurers is to delegate supervision of suitable sales to branch managers. Often times, the individuals who are signing off on consumer suitability certification forms have something to financially gain from the sale.

Some companies are invoking a broad interpretation of current law and are pushing back on measures to supervise and monitor the suitability of annuity sales. Such measures include:

Implementing a process to ensure all agents are provided with and acknowledge receipt of the company's Position of Suitability and Suitability Guide for Agents.

More closely monitoring the suitability of an agent's new annuity sales when a high percentage of an agent's new business involves replacements or surrenders.

Developing a set of established suitability standards that can provide guidance to the insurer's Suitability Review Team when determining whether the agent had reasonable grounds for believing a recommendation was suitable.

Since 2006, OCI received 236 complaint filings relating to annuities and suitability. Of these, over half led to administrative actions. These cases are difficult because they are brought after the products are sold. Therefore, there is a strong reliance on an insured's ability to recall several sequences of events leading up to and following an unsuitable sale.

A recent OCI case involving an agent who sold unsuitable products to six senior adults revealed the following:

- The agent used false statements and omitted information regarding prospective profits to be made. For example, equity indexed annuities use a myriad of moving parts that interact in complex ways. The agent emphasized the potential to make more money with an equity indexed annuity over a fixed annuity but failed to disclose the risk of less return than a fixed annuity.
- The agent sold a policy with a 17 year surrender period to a client who was 74 years of age.
- The agent replaced a client's annuity product for a different one which resulted in a significant penalty. The decision to replace the product was made during a meeting scheduled to review death benefit paperwork due to the client's wife passing away just a few weeks prior.
- The agent made recommendations for his personal gain by generating commissions with no guarantee that the products would improve the situation of the consumers.

In February of this year, Wisconsin and four other states settled with a large Ohio-based insurance firm over the insurer's role in the unsuitable sale of variable annuities. Wisconsin's share of the settlement was \$235,000. As part of the settlement, the insurer must mail restitution options to eligible consumers.

SB 572 puts a framework in place for insurers to determine that products are suitable for consumers before they are issued. This will lead to fewer instances where consumers are sold unsuitable annuity products.

Key provisions include:

- Prohibiting the sale of an annuity unless:
 - Consumer suitability information is collected, including age; annual income; financial situation, risk tolerance and financial goals.
 - A consumer is informed of surrender periods, surrender charges and tax penalties if a decision is made to surrender or exchange their annuity product.
 - A consumer would benefit from certain features in the annuity.
 - The annuity as a whole is suitable given the consumers suitability information.
- Insurers must establish a supervision system that includes review of each recommended annuity sale prior to the issuance of the annuity. This may be set up as a "red flag" system that each application is run through and where any suspicious sale is "flagged" for further review.
- Insurers may contract out their review functions but must supervise any contractual performance including monitoring and conducting audits to ensure the contracted function is carried out properly. An annual certification from a senior manager representing that the functions are carried out properly is required as well. Insurers are responsible for corrective action and may be subject to penalties if the contracted party violates review requirements, etc.
- Insurers must establish product specific training for agents and agents cannot sell annuities unless they are in compliance with the insurer's product training requirements.
- Agents selling annuity products must complete a one-time 4 hour training course.
- Insurers are responsible for compliance with the requirements in SB 572 and may be subject to penalties relating to insurer violation or any of its insurance agent violations of the requirements.

Thank you for the opportunity to testify today. I encourage your support for this legislation.



Coalition of Wisconsin Aging Groups

Testimony to the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection in support of SB 572 Annuity Suitability Supervision

by John Hendrick

March 9, 2010

Senator Wirch, members of the committee, thank you for this opportunity to testify in support of SB 572 regarding annuity sales supervision. The Coalition of Wisconsin Aging Groups has a valuable perspective on this problem because, in addition to legislative advocacy on behalf of the one million Wisconsinites over 60, our organization provides direct services to seniors across the state.

For example, we have a statewide toll-free helpline for elderly victims of financial exploitation and as a result we hear about unsuitable annuities all the time. My impression is that the majority of all annuity victims are elderly. When you hear terms like “insufficient liquidity” and “screening prior to issuance”, you may think this is a dry bureaucratic solution to a non-existent problem. But I’d like to share with you just one of our helpline calls.

A personal banker at a Wisconsin bank calls our office. He sees something fishy about the following: A stranger calls the bank and says he has instructions from a customer of the bank to clean out all his accounts including paying any penalties, fees or taxes on CDs and IRAs. The caller will stay at the home with the bank customer while his associate comes to the bank to collect the proceeds.

If you think this sounds more like the plot of a Hollywood heist movie than a thoughtful and careful process of estate planning and financial stewardship, I would agree with you. If you are my age, you may be picturing Robert Redford and Paul Newman running the scam. Today I suppose it would be George Clooney and Brad Pitt. As it turned out, this was a proposed annuity sale.

Let me emphasize at this point that annuities are a perfectly valid insurance product and there are uses that are completely appropriate. But there are also dramatic abuses and the best time to deal with them is before the annuity is issued. We have methods to deal with a specific insurance salesman after the fact.

But in order to prevent those annuities from being issued in the first place, we need the insurance companies to screen those sales prior to issuance. With modern technology, it is very possible to do this and all we need is this bill to set it in motion. Thank you for giving this bill your full consideration.



Elder Law Section Board



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Charles J. Stansberry, Jr.
Schober Schober & Mitchell SC

March 9, 2010

TO: Senate Committee on Small Business, Emergency Preparedness, Technical
Colleges and Consumer Protection

FR: Ben Adams, Chair
Elder Law Section

RE: support for SB 572 relating to: suitability of annuity contracts

The Elder Law Section is comprised of a cross-section of practitioners who work to protect the rights of our clients and consumers. As attorneys, we work to develop and improve the laws that affect the elderly, and promote high standards of ethical performance and technical expertise for those who practice in the area.

The Elder Law Section strongly supports Senate Bill 572 relating to the suitability of annuity contracts. Senate Bill 572 revises the insurance statutes to provide additional requirements for insurance sales people and insurance companies to meet to ensure that the sale of an annuity to a consumer is suitable based on information the sales person must solicit from the prospective purchaser. Such information includes the consumer's financial and tax status. The sales person and insurance company must consider whether the annuity will replace another annuity, what the consumer's risk tolerance, liquidity needs, financial horizon and intended use of the annuity are. The bill requires that the consumer be informed of such things as whether a surrender charge or increased fees will be incurred for replacing an existing annuity.

The bill further requires training before a license to sell annuities will be issued. It requires the sales person to make reasonable efforts to obtain the suitability information from the consumer. It prohibits the insurer from issuing an annuity that the sales person has recommended unless it is reasonable to believe that the annuity is suitable for the consumer. It expands on the insurer's responsibility for monitoring and supervising annuity transaction recommendations.

Under the bill, the insurance commissioner retains authority to promulgate rules and to reduce or eliminate penalties for violations if corrective action is taken promptly for the consumer.

Elder law attorneys regularly see clients with annuities that are entirely unsuitable for their circumstances. Seventy- and eighty-year old clients with health problems who may

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foreseeably need liquidity to meet increasing health care needs are being sold deferred annuities with substantial penalties for surrender of these annuities within seven to 15 years after the purchase of the annuity. It is not uncommon for an older person to be sold a deferred annuity by a bank teller based on the fact that the interest rate promised on the annuity is higher than the person could obtain with a certificate of deposit. The teller either neglects to tell the customer or the customer fails to appreciate that the customer will lose 10% of the purchase value (and any interest that 10% would have earned) if the customer wants to get funds out of the annuity in the next seven years.

It is also not uncommon for an annuity to have features the purchaser cannot understand, such as investment in subaccounts that mimic mutual funds with the risk of loss from the investments. Clients frequently express surprise that they have to pay income taxes on the earnings on the annuity when the funds are distributed to the client—they fail to comprehend the difference between tax-deferred and tax-free.

Senate Bill 572 will give the insurance commissioner additional tools to regulate the sale of annuities to consumers. It requires sales people to receive training before receiving a license to sell annuities. It requires insurers to monitor and supervise the recommendations of the sales people as to the suitability of the sale of the annuity. The requirement that the sales person solicit information from the prospective purchaser upon which to base a recommendation for or against the purchase of the annuity in itself provides the consumer with protection. We find that the prospective purchaser often is offended if asked for personal financial information or health information and family circumstances in the annuity sales transaction, and yet this information is critical to the suitability analysis. By being asked the questions and then hearing the explanation of why the questions must be answered, the consumer will be given additional insight into whether this is, in fact, a good way to invest the money and whether the consumer is willing to take on the risks involved.

All consumers, but particularly the elderly, will benefit greatly from this legislation. We strongly urge your support for this legislation.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045.



NAIFA-Wisconsin Senate Testimony in Favor of SB572

March 16, 2010

Chairman Wirch and members of the committee, thank you for the opportunity to appear before you today. My name is John Wheeler, and I represent the Wisconsin federation of the National Association of Insurance and Financial Advisors, also known as NAIFA-Wisconsin, and have recently served as a member of the Wisconsin Insurance Department's Committee on Annuity Suitability.

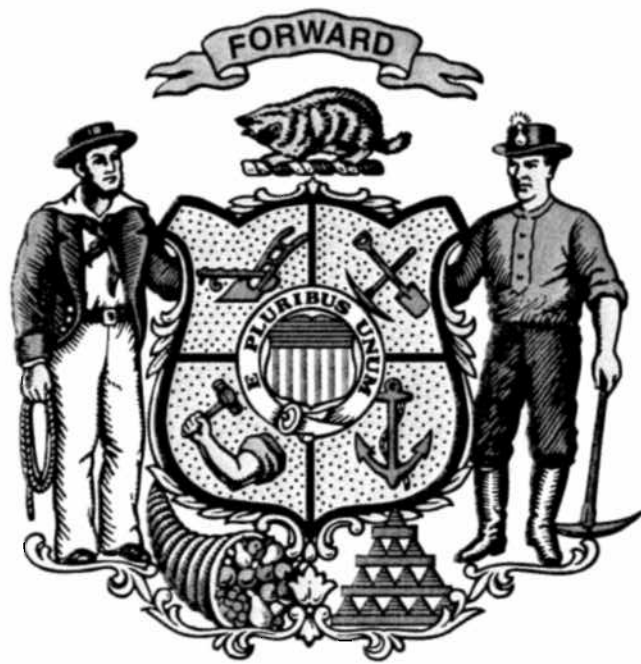
Early in 2007, Commissioner Sean Dilweg created a committee to explore strengthening suitability standards relating to the sale of annuity contracts in the State of Wisconsin. On September 11, 2007, this Wisconsin Annuity Sales Supervision Advisory Committee began work on a suitability model to lay out best practices for education, training, and supervision of producers engaged in the sale of annuities. Our committee consisted of legislators, insurance company representatives, regulators, consumer advocates, and licensed insurance producers. Over a two year time frame, the committee recommended substantial revisions to the NAIC Suitability in Annuity Transactions Model, much of which is contained in the legislation before you today.

Despite Wisconsin having current laws on the books, OCI continues to deal with an unfortunate number of unsuitable annuity sales to senior citizens. Annuities are complex financial instruments, which when properly used can greatly enhance one's financial security. However, because of their complexity, regulators and companies must remain vigilant in monitoring annuity sales to ensure that producers prescribe the most suitable solution in each case.

We at NAIFA-Wisconsin are passionate about maintaining strong suitability standards for the products we sell. These high standards, which we individually and collectively hold and which are underpinned by good legislation which this body enacts, serve to provide the people of Wisconsin with not only quality products, but quality, knowledgeable professionals to sell and service them. While not perfect, the newly revised model provides clear standards for both suitable sales, education and training requirements, and for the supervision of a company's sales representatives.

The ability to guarantee lifetime income is an important component of any sound income or retirement plan, and ensure retirement security for the people of Wisconsin that we serve. Annuities are financial tools that can guarantee lifetime income. NO OTHER FINANCIAL TOOL CAN DO THIS. Because we believe that this legislation will raise the bar for ensuring annuity sales suitability standards in Wisconsin, NAIFA-Wisconsin heartily endorses SB 572.

Thank you for the opportunity to testify before the committee today, and for your attention to this important issue. I hold myself available to answer any questions you may have.





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

December 18, 2009

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COMMISSIONER THOMAS R SULLIVAN
CHAIR NAIC LIFE AND ANNUITIES (A) COMMITTEE
CONNECTICUT INSURANCE DEPARTMENT
153 MARKET ST
HARTFORD CT 06103

MEMBERS, NAIC LIFE AND ANNUITIES (A) COMMITTEE

Re: Revised NAIC Suitability in Annuity Transactions Model Regulation ("Model")

Dear Commissioner Sullivan and Members:

I urge the Committee to adopt the Model with the non-substantive revisions recommended by Jim Mumford (IA), Keith Nyhan (NH) and Mark Franklin (CT). I also want to express my admiration and appreciation for this group's hard work and careful appraisal of the many comments. We differ from their recommendation only on two substantive matters, described below, but acknowledge their forthright effort to bring these issues to the Committee.

The Model, with the non-substantive revisions, represents a broad, if not perfect, consensus. Most important, the Model represents a major improvement in the protection of annuity consumers. It is time to adopt and implement it.

We ask the Committee to modify the recommended revision in only two areas:

- 1) Confirmation of consumer suitability information.

Restore Section 6 F (1) (d), page 5, as follows:

Section 6 F (1) (d) The insurer shall maintain reasonable procedures to confirm consumer suitability information to the extent reasonably appropriate to identify, and to deter, insurance producer submission of inaccurate information. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity, or both;

The Model requires an insurer to maintain reasonable procedures to independently confirm consumer suitability information. These procedures may be on a sampling basis and may be conducted after issuance. This requirement is similar to FINRA Rule 2821 requirements and should not be deleted as recommended.

The Working Group heard, and rejected, the suggestion that this provision be deleted. The FINRA safe harbor in effect requires an insurer selling through a FINRA member broker to apply "front end" suitability information confirmation mechanisms. Consumers purchasing through other distribution channels should be confident that similar front end confirmation procedures are in place.

An insurer is accountable under the Model for the suitability of the recommendation when suitability information is falsified. Moreover the insurer is required to "maintain reasonable procedures to detect recommendations that are not suitable" [under Section 6 F (1) (e)]. Delayed, and perhaps missed, identification of falsified suitability information from back end analysis of trends or complaints is no substitute for front end confirmation steps to ensure the integrity of the information.

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2) Insurer supervision of contracted suitability review procedures.

Restate, rather than delete, Section 6 F (2) (b) ii, page 5, as follows:

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Section 6 F (2) (b) ii Reasonable procedures applied to a contracted function under paragraph (1) (d) that are designed to address any conflict of interest.

*not going
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draft -*

The Model, under Section 6 F (2) (b) ii, imposes the additional requirement on an insurer to conduct examinations when the insurer contracts for performance of suitability review procedures. The recommended revision deletes this requirement out of a concern that the term "examination" is undefined. We suggest that, rather than accept the recommended deletion of the required examination, that the Committee instead restate the requirement in more general terms as provided in the suggested language above.

The Model's suitability review procedure requirement is critical. We recognize that the insurer remains accountable for the proper performance of this function regardless of whether the insurer contracts for performance of the suitability review procedure. However, after the fact penalties are not a substitute for encouraging properly constructed contractual arrangements that ensure the integrity of suitability review procedures.

I look forward to discussing the Model, and these views, with the Committee.

Sincerely,



Sean Ditweg
Commissioner
Chair, Suitability of Annuity Sales Working Group



THIS VERSION IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY

Draft: 12/21/09

Adopted by the Life Insurance and Annuities (A) Committee, 12-21-2009

Underlining and overstrikes show the changes from the Dec. 17 draft. This version of the revisions is for informational purposes only.

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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Section 9.	[Optional] Recordkeeping
Section 10.	Effective Date

Section 1. Purpose

- A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.

Section 2. Scope

This regulation shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

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 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:

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- (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;
- (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- (5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- (6) 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. "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].
- C. "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].
- D. "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.
- E. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- F. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
- G. "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.
- H. "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
 - (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.

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Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. 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.

- I. “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:
 - (1) Age;
 - (2) Annual income;
 - (3) Financial situation and needs, including the financial resources used for the funding of the annuity;
 - (4) Financial experience;
 - (5) Financial objectives;
 - (6) Intended use of the annuity;
 - (7) Financial time horizon;
 - (8) Existing assets, including investment and life insurance holdings;
 - (9) Liquidity needs;
 - (10) Liquid net worth;
 - (11) Risk tolerance; and
 - (12) Tax status.

Section 6. Duties of Insurers and of Insurance Producers

- A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following:
 - (1) The consumer has been reasonably 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, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) 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.

- (2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
- (3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any,

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are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

- (4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
 - (a) 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;
 - (b) The consumer would benefit from product enhancements and improvements; and
 - (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

- B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

- C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

- D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C 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 suitability 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 insurer or the insurance 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.

- E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:
 - (1) Make a record of any recommendation subject to section 6A of this regulation;
 - (2) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
 - (3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

- F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

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- (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;
 - (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance 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 insurance producers;
 - (d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. 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 maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
 - (f) The insurer shall annually provide a 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.
- (2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). 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 paragraph (1) 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.
- (3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.
- G. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:
- (1) Truthfully responding to an insurer's request for confirmation of suitability information;
 - (2) Filing a complaint; or

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- (3) Cooperating with the investigation of a complaint.
- H. (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.

Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
 - (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
 - (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Section 7. Insurance Producer Training

- A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B. (1) (a) An insurance 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) Insurance 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 fixed, variable and indexed annuity contract provisions affect consumers;
 - (d) The application of income taxation of qualified and non-qualified annuities;
 - (e) The primary uses of annuities; and
 - (f) Appropriate 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

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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 insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].
- (6) 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].
- (7) 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 to producer continuing education course approval].
- (8) 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.
- (9) An insurer shall verify that an insurance 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

- 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 insurance producer, the commissioner may order:
 - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;
 - (2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance 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 or the State's statute that authorizes the commissioner to impose penalties and fines.

Section 9. [Optional] Recordkeeping

- A. Insurers, general agencies, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert

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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 an insurance 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, microprocess, 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 six (6) months after the date the regulation is adopted or on [insert date], whichever is later.

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Wisconsin Council of Life Insurers

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Allianz Life Insurance Company of North America
American Equity Investment Life Insurance Co.
Ameriprise Financial Services, Inc.
American Family Life Insurance Company
Aviva USA
Catholic Knights
CUNA Mutual Insurance
Equitable Reserve
Guardian Life Insurance Company of America
Genworth Financial
MetLife
National Guardian Life Insurance Company
Northwestern Mutual
Prudential Life Insurance
State Farm
Thrivent Financial for Lutherans
WEA Trust

MEMORANDUM

TO: DEPUTY COMMISSIONER KIM SHAUL
FROM: CONNIE O'CONNELL
SUBJECT: OCI ANNUITY WORKING GROUP
DATE: JANUARY 20, 2010

Thank you for the opportunity to provide comment on the direction of the Annuity Sales Supervision Advisory Committee. We understand that on Friday we will be reviewing the National Association of Insurance Commissioners' (NAIC) Draft Revisions to the Suitability in Annuity Transactions Model Regulation. Although we are not taking a position on this Model, we strongly recommend that the Working Group support efforts for uniform adoption of any amendments to existing Annuity Suitability requirements.

Uniformity

One of the key functions provided by the NAIC is the development of uniform model laws. The NAIC brings together the collective experience and knowledge of regulators across the country to hear from consumer and industry representatives on a range of issues affecting the insurance industry. The NAIC has set aside funds to pay expenses for consumer representatives to attend the meetings and provide voice to the deliberations. Representatives of the insurance industry are also well represented during these discussions.

Not all insurance issues have been found to be appropriate for model law development. Different demographics, geographic risks and consumer expectations have resulted in some insurance regulations having more variability from state to state. This is particularly true for property and casualty insurance products. In these instances, either models are not created or the NAIC establishes minimum national standards which provide more room for state variability. In contrast, regulators have found greater need for uniformity in areas such as long term care insurance and life insurance. There are considerable benefits to consumers when consistent regulation is applied to insurance products that they will hold for a longer period of time, through changing life circumstances. Not only is there consistent application of rules from state to state, but prices are lower for consumers when the same product can be sold in many different states without variation. Consistency in regulation is also important to life insurance companies who spend many millions of dollars every year complying with state insurance regulation. Compliance with one uniform system is significantly less expensive than modifying systems or developing new systems for what are often minor state variations. A lack of uniform regulation increasingly places life insurance company products at a competitive disadvantage as compared to other types of financial institutions who offer similar products.

In 2008, the NAIC modified its model law development process, placing an emphasis on uniform state adoption. Prior to a model law being developed, the requestor must provide certain information, including an assessment as to the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC. When a model is adopted by the full membership, NAIC members are committed to devote significant regulator and NAIC resources to communicate, educate and support the Model.

“A” Committee Draft Regulation

The draft regulation we are considering today is not a final NAIC Model Draft. The draft recommended by the NAIC Annuity Suitability Working Group was modified by the “A” Committee, the parent committee responsible for the oversight of life and annuity products. In this memo, we will refer to the draft as the A Committee Draft. The A Committee Draft will be presented to the NAIC Executive/Plenary for a vote by the members, possibly during an interim telephone conference in the next several weeks or when the NAIC meets in March.

Additionally, the Chair of the “A” Committee, Commissioner Sullivan, has indicated that the NAIC may provide interpretive guidance to assist companies in their efforts to comply with this new model. This guidance is important because some of the requirements of the A Committee Model are unclear and could be interpreted by state regulators in ways that vary significantly. Even though we recognize additional changes are unlikely, we recommend that Wisconsin not adopt new suitability standards until the NAIC has taken final action, adopting a model and providing guidance regarding the interpretation of the model. Uniformity should not be sacrificed for speed.

Amendments to the A Committee Draft

We strongly encourage the Working Group to recommend that the Wisconsin law be consistent with the NAIC model. Therefore, we recommend amendments to the A Committee Draft be rejected. Wisconsin is likely to be the first state to bring forward the A Committee Draft for legislative consideration. We believe it is important that the stage be set for uniform adoption of the model, not individual state variances. We further recommend that if Wisconsin moves forward in advance of NAIC final action, that we are on record in support of amendments necessary to create uniformity between Wisconsin law and the model adopted by the full NAIC membership.

We understand that the Office of the Commissioner of Insurance intends to recommend two amendments to the A Committee Draft. These amendments were discussed in the letter we received with our materials for Friday's meeting. These amendments were offered when the A Committee took final action on the draft and were not adopted by the Committee.

The first amendment specifically requires insurers to maintain procedures to confirm suitability information to identify, and to deter, insurance producer submission of inaccurate information. The A Committee removed this language after the industry pointed out that this is appropriately addressed through the supervisory requirements for reviewing and monitoring designed to reasonably assure recommendations are suitable and detect those that are not. Reviewing and monitoring may include making contact with recent purchasers to confirm suitability information, but it should not be a requirement if other procedures achieve the same objective. Although it was originally suggested that this change would be similar to FINRA requirements, we believe there are important distinctions. FINRA does not require insurers to contact consumers to verify the information provided to broker-dealers. In addition, in the FINRA context, the consumer information the consumer information has a more general application than just the single transaction. The broker has a responsibility to assure accuracy of the information that is attached to an account record for all transactions going forward. Insurers may employ the methods described in this amendment. However, they may have other approaches that are equally effective.

OCI has also recommended the section of the draft related to insurer supervision of contracted suitability review procedures be amended. The A Committee Draft includes strong language in this section regarding an insurer's responsibility for taking appropriate corrective action when contracting for performance of a function. The insurer is required to monitor the contractual performance and, as appropriate, conduct audits. OCI is proposing additional language to require procedures designed to address any conflict of interest. This amendment was also offered to the A Committee but it was not adopted. We believe the broad nature of the existing language provides the accountability regulators desired without creating an individual state variance.

Conclusion

The Wisconsin Council of Life Insurers respectfully requests that the Working Group recommend that changes to the annuity suitability laws be consistent with the final NAIC Annuity Suitability Model. Therefore, we request that action be delayed until the NAIC members have an opportunity to consider changes to the existing model. We further request that Wisconsin work with the NAIC to create interpretive guidance to provide informed and consistent compliance with the new model. If Wisconsin should choose to move legislation prior to NAIC action, we believe this legislation should be consistent with the current NAIC draft and modified to reflect any changes made through the NAIC process.



This bill updates Wisconsin's suitability of annuity sales statute.

We improve consumer protections by strengthening insurer supervision over suitability determinations in annuity sales. We also require that agents are adequately trained.

The number of complex annuity products in the market today continues to grow. As baby-boomers continue to age and plan for retirement, the consumer base for these products is also increasing.

Current law has proven inadequate in ensuring consumers are sold annuity products that meet their financial needs and goals. Annuity sales failing to take consumer's current and future financial goals/needs into account are called unsuitable.

The requirements in this bill put a framework in place to have insurers determine that a product is suitable for the consumer before it is issued. This will lead to fewer instances where consumers are sold unsuitable annuity products.

Key provisions include:

- Prohibiting the sale of an annuity unless:
 - Consumer suitability information is collected, including age; annual income; financial situation, risk tolerance and financial goals.
 - A consumer is informed of surrender periods, surrender charges and tax penalties if a decision is made to surrender or exchange their annuity product.
 - A consumer would benefit from certain features in the annuity.
 - The annuity as a whole is suitable given the consumers suitability information.
- Insurers must establish a supervision system that includes review of each recommended annuity sale prior to the issuance of the annuity. This may be set up as a "red flag" system that each application is run through and where any suspicious sale is "flagged" for further review.
- Insurers must establish product specific training for agents and agents cannot sell annuities unless they are in compliance with the insurer's product training requirements.
- Agents selling annuity products must complete a one-time 4 hour training course.
- Insurers are responsible for compliance with the requirements in the bill and may be subject to penalties relating to insurer violation or any of its insurance agent violations of the requirements.

Thank you. I will now turn things over to Gunther who will testify on behalf of Commissioner Dilweg.

BACKGROUND AND ADDITIONAL INFORMATION

BILL BASED ON NATIONAL MODEL

This bill reflects modifications recently adopted by the National Association of Insurance Commissioners (NAIC) Life Committee to the Suitability in Annuity Transactions Model Regulation.

RED FLAG EXAMPLE

Example: An application for an annuity product where most of the consumer's liquid assets would be placed into an annuity. This would likely warrant further suitability review to determine such issues as whether the consumer understands the decision they are pursuing and whether the consumer has much to gain from the product.

INSURER POSITION ON BILL

We've been informed by Connie O'Connell that insurers are taking a neutral stance on the bill provided that it remains consistent with the model legislation proposed nationally.

NUMBER OF CASES

Since 2006, OCI received 236 complaint filings relating to annuities and suitability. Of these, over half led to administrative actions. These cases are difficult because they are brought after the products are sold. Therefore, there is a strong reliance on an insured's ability to recall several sequences of events leading up to and following an unsuitable sale.