May 2017

STATE LEGISLATIVE BRIEF

National Association of Insurance Commissioners

The Center for Insurance Policy and Research

The NAIC Annuity Suitability Model Regulation

- *The NAIC's Suitability in Annuity Transactions Model Regulation (#275) is designed to protect all consumers, regardless of age, from abusive and predatory practices by life insurance and annuity producers. Where feasible and rational, the NAIC and its committees and working groups have made considerable efforts to harmonize the NAIC Annuity Suitability Model with similar SEC and FINRA regulations.*
- *The United States Treasury Department has raised concerns regarding the lack of nationwide adoption of this model regulation and its impact on consumer protection for seniors, and recent Congressional interest has raised questions about state efforts to ensure consumers are protected absent strong standards and enforcement powers.*
- *As millions of baby boomers are set to retire and federal policymakers increasingly look to insurance products to address the lifetime income needs of retirees, state legislators and regulators must demonstrate that they have the authorities and tools necessary to oversee this marketplace.*

Background

Ensuring suitable sales of life insurance and annuity products to consumers of all ages is part of the NAIC's core mission of protecting the public interest and facilitating the fair and equitable treatment of insurance consumers. As early as 2000, the NAIC adopted a white paper calling for the development of suitability standards for non-registered insurance products, similar to those already in place under the Securities and Exchange Commission (SEC) for registered products. Guided by the white paper, the NAIC adopted the *Suitability in Annuity Transactions Model Regulation* in 2006.

In 2010, the NAIC amended this model to include three core changes: 1) to clarify that the insurer is responsible for compliance with the model's requirements even if the insurer contracts those requirements out to a third party; 2) to require the review of all recommended annuity transactions, in a manner the carrier considers appropriate and to ensure suitability in order to better protect consumers from unsuitable sales and abusive sales and marketing practices; and 3) to establish general training and specific-product training for insurance producers to ensure the producer knows what he or she is selling. The revised model requires an insurance producer, or an insurer where no producer is involved, to have reasonable grounds for believing that a recommendation is suitable for a consumer based on the following criteria: financial experience, financial objective, intended use of the annuity, financial time horizon, existing assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, and tax status. Additionally, the producer or insurer must have a reasonable basis to believe that the consumer has been informed and provided information related to the annuity product the consumer is considering purchasing. The revisions to this model strengthen its requirements to help ensure suitable sales of life insurance and annuity products to consumers, and where feasible and rational, the standards are consistent with those imposed by the Financial Industry Regulatory Authority (FINRA).

In 2013, the United States Treasury Department's Federal Insurance Office recommended that all states adopt the NAIC's 2010 version of the *Suitability in Annuity Transactions Model Regulation* and raised concerns with the lack of consistency among state laws in this area. The Department of Labor also has authority over annuity sales to the extent they are conducted by ERISA fiduciaries and finalized a rule expanding the definition of fiduciary to cover a broader group of entities, including a larger set of insurance agents, brokers, and insurers. The rule is being reviewed by the current administration.

Key Points

- ✓ To date, 43 states (AL, AK, AZ, CA, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY) have adopted the 2010 amendments to the model by law or regulation.
- ✓ Over the next decade, millions of baby boomers will retire. It is imperative to have strong standards in place to ensure they receive clear and appropriate sales, marketing, and financial advice relating to the purchase and management of life insurance policies or annuity contracts from insurers and insurance producers.
- ✓ The model's revisions provide a safe harbor for sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions, subject to specific monitoring and supervisory assistance by the insurer.
- ✓ The NAIC has also adopted the *Annuity Disclosure Model Regulation* (#245) which is comparable in scope. This model requires an Annuity Buyer's Guide be delivered in the sale of any kind of variable or fixed annuity.

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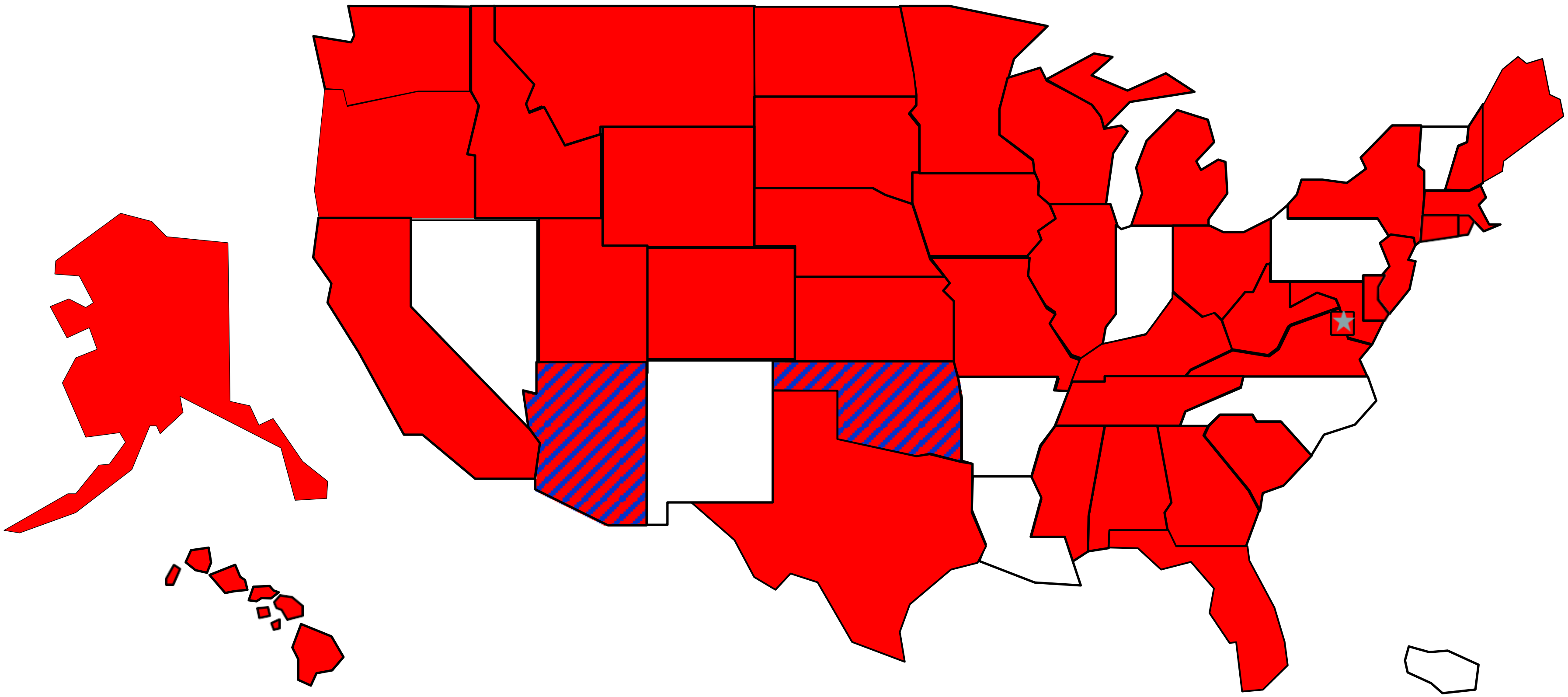
Implementation of 2010 Revisions to Model #275 Suitability in Annuity Transactions Model Regulation [status as of May 8, 2017]



Adopted Model #275

(43: AL, AK, AZ, CA, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY)

Partial Adoption of Model

Action under consideration

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No action to date

(9: AR, IN, LA, NV NM, NC, PA, PR, VT)