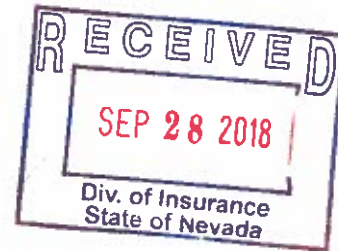


Andrew J. Bowden
SVP, General Counsel

September 21, 2018

Commissioner Barbara Richardson
Nevada Department of Business and Industry
Division of Insurance
1818 E. College Parkway, Ste. 103
Carson City, NV 89706



**Re: Update to Proposed Amendment to the Suitability in
Annuity Transactions Model Regulation (the "Model Regulation")**

Dear Commissioner Richardson:

I am writing to update you on our proposal to amend the Model Regulation to exempt recommendations of a "fee-based" annuity¹ by a "specified fiduciary."²

Background and Growing Industry Support

Since early 2018, we have discussed our proposal with a wide range of stakeholders, including you and representatives of the Annuity Suitability Working Group ("Working Group"), the Life Insurance and Annuities (A) Committee, the NAIC Executive Committee, and the Center for Economic Justice ("CEJ").³ We have also engaged with a number of our insurance industry peers. I am pleased to report that AXA, Prudential Financial, and Brighthouse Financial, Inc. now support our proposed amendment to the Model Regulation.

Evolution of the Proposed Amendment

We have also modified our proposal in response to helpful feedback from several Commissioners. We originally proposed that recommendations of fee-based annuities by fiduciaries be exempted from the Model Regulation.⁴

¹ A fee-based annuity has no sales charge or commission expense and no surrender charge.

² A specified fiduciary is an individual acting, registered, and regulated under a fiduciary standard of care as a bank, trust company, or investment adviser under the Investment Advisers Act of 1940 or an equivalent state law.

³ As of the date of this letter, we have met with senior insurance department representatives from California, Georgia, Idaho, Iowa, Maine, Maryland, Michigan, Nevada, New York, Oklahoma, Rhode Island, South Carolina, Tennessee, and Wisconsin. We are scheduled to revisit Iowa and to meet with Florida and Ohio in October 2018.

⁴ We proposed that the following language be added as a new Section 4(C) to the language currently existing in Section 4 (Exemptions):



We have added an alternative approach, which would expand the existing “safe harbor” in Section 6.H of the Model Regulation to include sales of fee-based annuities made by fiduciaries that comply with Securities and Exchange Commission and/or federal banking requirements.⁵

While we believe that there is more than ample justification for an outright exemption, representatives of several state insurance departments with whom we met preferred the incremental step of expanding the existing safe harbor as the means to harmonize overlapping regulation and avoid redundancy.

Review of Rationale for the Proposed Amendment

Separate and apart from the Model Regulation, recommendations of fee-based annuities by fiduciaries are subject to extensive state and federal licensing, regulation, and oversight. Fiduciaries must put their clients’ interest first and act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent expert, acting in a like capacity and familiar with such matters, would use. In addition, if an exemption is added, or if the existing safe harbor is expanded, state insurance departments will retain their ability to investigate and enforce the consumer protection provisions within their insurance codes, which generally prohibit the use of any fraudulent, deceptive, or manipulative device in connection with the sale of insurance, as part of their oversight of fee-based annuity transactions. States will also retain the ability to investigate and enforce their securities anti-fraud statutes that govern the sale of variable annuities insofar as they regulate variable annuities as securities, as most states do. So, adding an exemption, or expanding the safe harbor, does not mean that recommendations of fee-based annuities by fiduciaries will go unregulated. To the contrary, the fiduciaries will be subject to higher standards than those in the Model Regulation.

The Model Regulation (and comparable FINRA regulations) were originally adopted to address potential conflicts of interest presented by the up-front commission structure associated with most traditional, commission-based annuities and to ensure the suitability of products that may have multi-year surrender charge periods. Those potential conflicts and product features do not exist when a fiduciary offers a fee-based annuity. The fiduciary

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- 4(C). Any recommendation by a Specified Fiduciary provided that:
- (1) No sales compensation is received by the Specified Fiduciary, not including any compensation paid directly by the consumer to the Specified Fiduciary; and
 - (2) The annuity has no surrender period or surrender charge.

We also proposed that the following language be added to Section 5 (Definitions):

“Specified Fiduciary” means an entity acting, registered, and regulated under a fiduciary standard of care as (i) a bank, (ii) a trust company, or (iii) an investment adviser under the Investment Advisers Act of 1940 or equivalent state law, and a person acting as an associated person of a Specified Fiduciary.

⁵ Our additional, alternative approach proposes the addition of the underlined language below to existing Section 6.H:

Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions, **and sales made by a Specified Fiduciary in compliance with applicable Securities and Exchange Commission and/or federal banking requirements**, shall satisfy the requirements under this regulation....



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receives no sales compensation, and the consumer may surrender the fee-based annuity at any time without penalty. A fiduciary has no more incentive to recommend a fee-based annuity than any other investment product, including a mutual fund or ETF. Thus, the potential conflicts and features of traditional, commission-based annuities that the Model Regulation is intended to address are not present when a fiduciary recommends a fee-based annuity.

Finally, and most importantly, fee-based annuities may be, in many instances, the “best” solution for consumers. They offer insured protection against market and longevity risk -- protections no other investment solution offers. At a time when more Americans are reaching retirement age than at any point in history⁶, and nearly two-thirds of Americans between the ages of 20 and 70 fear running out of money in retirement more than they fear death⁷, policymakers, including state insurance commissioners, should seek to preserve access to fee-based annuities from fiduciaries on a level regulatory playing field with other fee-based investments offered by fiduciaries. Imposing the requirements of the Model Regulation in the absence of a consumer protection or other reason to do so will serve to deter fiduciaries from offering fee-based annuities when they may be in consumers’ best interest, thereby harming consumers.

What’s Next?

We continue to engage one-on-one with states participating in the Working Group and Life Insurance and Annuities (A) Committee, and we look forward to seeing you in Chicago in October.

We also intend to continue to engage with the CEJ and other consumer advocates. The CEJ has commended the insurance industry for offering lower cost, more transparent annuities, devoid of compensation-related conflicts of interest and surrender charges. It also supports engagement with consumers under a fiduciary standard of care. It presently neither supports nor opposes our proposal and has expressed a desire to continue our discussions regarding product design and regulation.

We appreciate the time you have taken to consider our request and, particularly, to meet with us. We hope this update is helpful and informative. Please contact me at any time if you have any questions or would like additional information. We are available and pleased to talk with you further about our company, its products, and our proposed amendments to the Model Regulation.

Very truly yours,

Andrew J. Bowden
Senior Vice President and General Counsel

⁶ Each day since the beginning of 2011, roughly 10,000 Americans have reached age sixty-five ... and as many or more will continue to do so each day until the end of 2029. Pew Research Center, *Baby Boomers Retire*, (Dec. 29, 2010), <http://www.pewresearch.org/facttank/2010/12/29/baby-boomers-retire/>.

⁷ Allianz, *Finally Feeling Better About Retirement, Optimistic Baby Boomers Offer Lessons for Younger Generations*, (Sept. 25, 2017), <https://www.allianzlife.com/about/news-and-events/news-releases/Generations-Ahead-Study-2017>.



Nevada Independent Insurance Agents

September 28, 2018

The Honorable Barbara D. Richardson
Insurance Commissioner
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706



Re: LCB File No. R165-18I

Dear Commissioner Richardson:

On behalf of the Nevada Independent Insurance Agents (NIIA), we write to express our association's views concerning efforts by the Division of Insurance to revise the requirements of the Nevada Administrative Code that apply to annuity transactions. NIIA has represented the independent agent community of our state for more than 100 years, and our member businesses offer all lines of insurance and provide customers a choice of policies from a variety of insurers. NIIA is also the Nevada affiliate of the Independent Insurance Agents and Brokers of America (IIABA), the oldest and largest association of insurance producers in the United States.

NIIA is troubled by and opposed to certain elements of the initial draft regulation that was released on June 22 (LCB File No. R165-18I). The narrow source of our concern is the inclusion of a series of provisions that would establish a fiduciary or "best interest" standard of care for producers who sell all forms of annuities (including those with no investment component). Requiring producers by law to act in the best interest of a customer may seem innocuous and unremarkable, but such a standard is abstract, nebulous, subjective, and replete with adverse consequences. Mandating adherence to such a standard in connection with fixed annuity sales will not alter the way producers serve the needs of customers or result in an improved consumer experience, and it is unclear what new actions, steps, or tasks an agent would need to perform that are not routinely performed today. Revisions to the regulatory framework should not require guesswork and speculation from producers, and any amendments should instead make clear what actions and compliance measures are required. The promulgation of such a best interest standard, however, would result in regulatory uncertainty, increased litigation, and reduced competition, and it would have particularly severe consequences for small agencies and the consumers who rely on these qualified and accountable providers for their financial needs.

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While NIIA believes it would be inappropriate to adopt a regulation in the form initially drafted, it is important to note again that our concerns are narrowly focused and do not extend to most aspects of the proposal. We are troubled by the best interest standard of care elements of the draft, but we do not oppose any efforts by the Division to implement the suitability regulatory framework that exists in most other states and to adopt other revisions. Such provisions bolster and build upon the existing regulation and establish clear, objective, unambiguous, and meaningful rules that producers must adhere to.

NIIA recognizes that the initial draft is just that – an *initial* draft – but we thought it appropriate to share our concerns with you in a good faith manner at this early stage in the process. We know the final form of the regulation is likely to be very different from this original draft and look forward to actively sharing our perspective as the proposal is further considered and refined. NIIA is also working closely with our national association colleagues on this issue, and IABA representative Wesley Bissett recently briefed us on the conversation he had with you last month about our concerns. We are very heartened and encouraged to hear that the Division is not wedded to including the best interest elements in the regulation.

NIIA appreciates having the opportunity to reiterate our thoughts on this topic, and we thank you for your consideration of our perspective. We would be happy to discuss this issue (or other matters) with you in greater detail at any time.

Very truly yours,

Susan Bauman, Executive Director

Susan Bauman
NIIA Executive Director



Quincy Branch
NIIA Legislative Chairman

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