



## **NAIC Best Interest Implementation Plan for Nationwide® Annuity Business**

NAIC Best Interest for annuities becomes effective in Arizona ("AZ") on 12/31/2020 and in Iowa ("IA") on 1/1/2021 ("Revised Model"). This communication provides details and updated information that your Firm will need to know to conduct annuity business on or after the effective dates.

### **Background:**

On February 13, 2020, the National Association of Insurance Commissioners ("NAIC") adopted revisions to the existing Suitability in Annuity Transactions Model Regulation.

The major revisions to the Revised Model include, but are not limited to, the following:

- incorporating a best interest standard of care obligation for financial professionals when recommending the purchase or exchange of an annuity
- expanding the safe harbor to include the SEC's Regulation Reg. BI (Reg. BI), investment advisors and plan fiduciaries.
- increasing the replacement/exchange look back period from 36 to 60 months

Please note, the Revised Model is not applicable to life insurance nor does it apply to post issue transactions.

Nationwide will rely on your Firm to supervise that your financial professionals are acting in the best interest of customers, conducting suitability review and maintaining the required records for Fixed and Variable annuities.

Our Office of Compliance currently conducts Firm and financial professional reviews. We will require Firms to complete an annual Due Diligence Questionnaire along with a Suitability and Best Interest Certification. We will use this information to develop a risk-based review in which we will sample suitability and best interest paperwork.

### **New requirements and how we intend to support you:**

#### **NAIC Best Interest Financial Professional Training**

We are expecting Firms to communicate that NAIC Best Interest training is required and ensure that AZ and IA licensed and appointed financial professionals complete the training prior to submitting new business applications on 12/31/2020 in AZ and on 1/1/2021 in IA for newly appointed financial professionals. Nationwide will be verifying completion of this training effective 12/31/2020 in AZ and 1/1/2021 in IA.

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Financial Professionals who have already completed the existing NAIC Suitability 4-hour training course prior to 12/31/2020 in AZ and 1/1/2021 in IA, must within 6 months after AZ and IA's effective dates, complete:

- A new four (4) credit training course approved by the Department of Insurance after 12/31/2020 in AZ and 1/1/2021 in IA (Reg Ed: Recommending Annuities Under the NAIC Best Interest Standard/Course Code 490)

**or**

- An additional one-time one (1) credit training course approved by the Department of Insurance and provided by the Department of Insurance-approved education provider (Reg Ed: Recommending Annuities Under the New NAIC Best Interest Standard - 1 Hour Update Course /Course code 491)

Nationwide will be verifying completion of this training effective 6/30/2021 in AZ and 7/1/2021 in IA.

We will not be making any changes to Nationwide specific product training.

#### **Safe Harbor**

The expanded safe harbor provision allows Carriers to rely on "comparable standards" for financial professionals to meet their best interest obligation. Nationwide plans to rely on your Firm's Reg. BI requirements to satisfy the care, disclosure, conflict of interest and documentation obligations under the Revised Model. We are not applying the safe harbor to the training obligations until such time as the NAIC has communicated clear guidance.

#### **Product Profiles Summaries**

Nationwide is developing product profile summaries to assist your financial professionals in satisfying product information requirements.

#### **Financial Professional Record Retention and Required Documentation Checklist (attached)**

For Nationwide appointed financial professionals licensed in the states of AZ and IA, it is important they maintain and make available upon request to Nationwide, or a state regulator, a record of the client information collected, documentation relating to the recommendation, and whether the client elected to purchase an annuity contract. All active client files should be maintained indefinitely and all inactive client files for seven (7) years.

Nationwide has developed a checklist to assist financial professionals with NAIC Suitability/Best Interest documentation and record keeping requirements. The checklist reflects Nationwide's current understanding of the Regulation and any future changes will be published on [nationwidefinancial.com](http://nationwidefinancial.com).

A Frequently Asked Questions guide has been created to help address financial professional and firm questions.

Product Profile Summaries, Documentation Checklist and Frequently Asked Questions document will be available through [nationwidefinancial.com](http://nationwidefinancial.com) or by contacting the Annuity Solutions Center at 1-800-321-6064 or our Advisory Sales Team at 1-866-667-0564.

### **Business Practice and Compliance Guide**

NAIC Best Interest requires detailed records and documentation to demonstrate compliance with the regulation. Nationwide will be reviewing and, if needed, updating its Business Practice and Compliance Guide and internal supervision program to ensure compliance with its requirements. If changes are needed, an email communication will be distributed to financial professionals informing them of the updates and provide a direct link to the Business Practice and Compliance Guide on Nationwide Financial's website at <https://nationwidefinancial.com/resources/support/business-practices>

### **We're ready to support you:**

Your business is important to us and our team is committed to helping you prepare for this change. If you have questions, please contact our National Sales Desk at 1-800-321-6064 or our Advisory Sales Team at 1-866-667-0564.

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Nationwide Investment Services Corporation, member FINRA, Columbus, Ohio.

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## NAIC 2020 SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

### **Financial Professional Record Retention and Required Documentation Checklist**

As a Nationwide appointed and state licensed producer, it is important to maintain and make available upon request to Nationwide or a state regulator a record of your customer information collected, documentation relating to the recommendation and whether the customer elected to purchase an annuity contract. Please maintain all active customer files indefinitely and all inactive customer files for seven (7) years.

Nationwide has developed this checklist to assist you as the financial professional with state required Suitability/Best Interest documentation and record keeping requirements. The checklist reflects Nationwide's current understanding of the Regulation and any future changes will be published on [nationwidefinancial.com](http://nationwidefinancial.com).

If the Financial Professional's firm conducts suitability, it is the responsibility of the Financial Professional to follow their Firm's policies and procedures including the Books and Records requirements. It is important to understand that any state regulator could request this information from you as part of a complaint or regulatory inquiry.

**For each annuity sales transaction in which you submit a new business application, you must complete:**

- Need Analysis
- Product Comparisons
- Signed Carrier Application
- Signed Customer Profile (i.e., Best Interest/Suitability form)

**For each transaction in which you interact with a customer, you should document whether:**

- New recommendation
- No recommendation made
- Customer decision made against the Financial Professional recommendation
- Customer refuses to provide relevant suitability information
- Recommendation made and later found to be inaccurate material information

**Where applicable, your file must also contain evidence that you informed the customer of the following:**

- The basis for each recommendation
- Product advantages/disadvantages and non-guaranteed elements
- Your relationship with the customer
- How compensation is paid for the sale of the annuity contract
- Any impact of replacing an existing product



**For each transaction you must provide the customer with:**

- Applicable disclosures.
- Carrier product summary or guide
- NAIC Customer Disclosure
- Disclosure of product limitations (if applicable)
- Replacement disclosure (if applicable)
- Any additional state required disclosures (if applicable)

**Retain all sales documentation used in making the recommendation, and anything else that may assist in supporting ANY recommendation and protecting you from potential customer complaint or regulatory scrutiny. This includes but is not limited to:**

- Training Completion Certifications
- Need Analysis
- Product Comparisons
- Signed Carrier Application
- Signed Customer Profile (i.e., Suitability Form)
- Signed Illustrations
- Sales material
- Personal notes including steps taken and analysis performed leading up to the recommendation
- Any required post issue documents such as delivery receipts

**Training & Other Considerations:**

- You must complete an NAIC Suitability/Best Interest course and maintain a copy of the certification of completion.
- You must complete the required product training prior to solicitation and maintain a copy of the certification of completion.
- Document any recommendation which does not result in a transaction in your file, such as a recommendation to hold.
- Document any recommendation which results in an annuity sales transaction and specifically elaborate on the "why" the basis of the recommendation is suitable. If the recommendation changes based on new information, document "why" the recommendation changed and "why" the basis of the new product recommendation is suitable

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## NAIC 2020 BEST INTEREST UPDATES SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

### FREQUENTLY ASKED QUESTIONS

**THIS FAQ IS INTENDED AS A SUMMARY AND DOES NOT ENCOMPASS THE ENTIRETY OF THE NAIC CHANGES TO THE MODEL REGULATION. FINANCIAL PROFESSIONALS HAVE AN OBLIGATION TO UNDERSTAND AND COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THE MODEL REG.**

#### **What happened?**

The NAIC updated the Suitability in Annuity Transactions Model Regulation (2020 Model Reg.) by adding in a best interest requirement, updating the safe harbor and training sections, and increasing the replacement look-back period.

#### **What changes were made?**

At a high level, the 2020 Model Reg.:

- takes into consideration that the recommended annuity shall be in a consumer's best interest and that a customer's financial objectives and insurance needs are effectively addressed at the time of the transaction.
- requires additional disclosure regarding
  - financial professional's relationship with their customer, what products you are licensed to sell, what carriers you are appointed to sell with and how you are compensated for your services, and, if applicable;
  - ramifications of not providing the information needed to complete the Customer Profile, and, if applicable;
  - acknowledging where a financial professional did not recommend the annuity transaction where their customer decides to move forward with the transaction;
- requires financial professionals to complete best interest training 6 months after the effective date.<sup>1</sup>

#### **What states have adopted and what's the compliance effective dates?**

Refer to ADDENDUM for state compliance effective dates and pending state actions.

#### **Who does it apply to?**

It applies to any licensed financial professional who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the financial professional has had any direct contact with the customer.

#### **What is considered a recommendation?**

A recommendation means advice provided by a financial professional to an individual customer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.

<sup>1</sup> States may deviate from the 2020 Model Reg's 6-month effective date and adopt a different training effective date. See ADDENDUM attached to this FAQ for more information.



### **What is not considered a recommendation?**

A recommendation is not intended to include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

**Note:** Nationwide expects its financial professionals to use only preapproved information where it relates to Nationwide products, education information and tools, customer service, etc.

### **What is considered compensation?**

The NAIC defined 2 types of compensation: Cash Compensation and Non-Cash Compensation.

**Compensation** means a discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received in connection with the recommendation or sale of an annuity from an insurer, intermediary<sup>2</sup>, or directly from the consumer.

**Non-cash compensation** means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

### **Did the 2020 Model Reg define “suitability” and/or “best interest”?**

Not specifically. The only place where the word “suitability” (or any form of the word “suitability”) can be found is in the title: **SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION**. Instead, the required Customer Profile is intended to capture the customer’s financial objectives used to evaluate if the recommendation will address the customer’s needs.

Best interest is also not specifically defined. The 2020 Model Reg. dictates four (4) elements which are required to satisfy best interest.

### **How do financial professionals stay within the parameters of the best interest requirement?**

Basically, the recommendation made must place the customer’s interest over the financial professional’s financial interest. This is satisfied by complying with the 2020 Model Reg.’s four (4) best interest elements, which are: Care, Disclosure, Conflict of interest and Documentation.

These four (4) elements were drafted with the intention of mirroring the Securities and Exchange Commission (SEC) best interest rule obligations (Rule BI). The main difference between Rule BI and the 2020 Model Reg. is that Rule BI governs only security products where the 2020 Model Reg. governs all-types of annuity products.

### **How do financial professionals satisfy the Care Obligation of best interest?**

When making a recommendation exercise reasonable diligence, care and skill to:

- Know your customer’s financial situation, insurance needs and financial objectives;
- Understand the available recommendation options after making a reasonable inquiry into options available to you by your Firm;
- Have a reasonable basis to believe the recommended option effectively addresses your customer’s financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the Customer Profile information; and
- Communicate the basis for each recommendation.

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<sup>2</sup> **Intermediary** means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.

### **How do financial professionals satisfy the Care Obligation of best interest? (Continued)**

In the case of an exchange or replacement, a financial professional shall consider the whole transaction, which must include the following:

- taking into consideration charges, fees, existing benefits,
- if replacing product would **substantially** benefit the customer in comparison to the replaced product over the life of the product; and
- whether the customer has had another annuity exchanged or replacement in the preceding 60 months.

### **Nationwide Support and In-Good Order Requirements:**

- For all products in which Firms conduct suitability reviews, Nationwide will rely on Firms to supervise that their financial professionals are acting in the best interest of consumers as well as maintaining the required records. Please refer to your Firm's best interest and suitability policies and procedures.
- If Nationwide is completing fixed product suitability, Nationwide will rely on financial professionals to complete, date and sign the new Customer Profile for Fixed Annuity Products form (Customer Profile), have their customer date and sign, and provide a copy to their customer. Financial professionals will need to provide upon request evidence that their customer received the Customer Profile.
- Nationwide recommends that financial professionals secure a signed receipt from their customer evidencing receipt of the Customer Profile and other disclosures where required.

### **What are the Disclosure obligations of best interest?**

There are three (3) types of disclosures:

**At the time of recommendation,** provide the NAIC Disclosure for Annuities (NAIC Customer Disclosure) which describes the scope and terms of the relationship with the customer and your role as the financial professional in the transaction. Specifically, it discloses: (1) what types of products you are licensed to offer, (2) how many carriers you work, and (3) your compensation structure.

**Upon request of the customer,** disclose:

- A reasonable estimate of the amount of cash compensation to be received by you as the financial professional, which may be stated as a range of amounts or percentages; and
- Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

**Prior to or at the time of the recommendation,** provide a reasonable summary format of all relevant suitability considerations and product information, both favorable and unfavorable, that provide the basis for any recommendations.

***Reminder: existing disclosure is still required:***

**On or prior to application,**

- provide required state replacement disclosure; and
- provide any other state or Nationwide required disclosures

### **Nationwide Support and In-Good Order Requirements:**

- **Product Profile Summary Disclosures**  
Nationwide developed product profile summaries for our actively sold products to assist the financial professional in satisfying product information (both favorable and unfavorable) requirements.



## **What are the Disclosure obligations of best interest? (Continued)**

### **Nationwide Support and In-Good Order Requirements:**

- **Customer Profile and NAIC Customer Disclosure**
  - The new Customer Profile includes customer and producer acknowledgements. The NAIC Customer Disclosure includes the terms of the financial professional's relationship with the customer. Where Nationwide conducts the fixed product suitability review, the new Customer Profile and NAIC Customer Disclosure will be required to be submitted with new business applications signed on or after 12/31/2020 in all states except New York.
  - The Customer Profile and NAIC Customer Disclosure are to be completed in their entirety, dated and signed by both the financial professional and customer on or before the application date.
  - For the Customer Profile, all checkboxes must be checked indicating YES or NO. If NO is checked, Nationwide will reject the application unless an explanation is provided as an attachment and signed and dated by the financial professional and customer.
  - The Fixed Annuity Suitability Checklist has been updated to provide guidance on Nationwide's new suitability procedures.
- **Nationwidefinancial.com update**
  - The Product Profile Summaries, Customer Profile, NAIC Customer Disclosure and Suitability Help Guide will be available through nationwidefinancial.com or by contacting our Annuity Solutions Center at 1-800-321-6064.

Nationwide recommends that financial professionals secure a signed customer receipt evidencing they received the Product Summaries, Customer Profile, NAIC Consumer Disclosure and other disclosures as required by the state of application or by Nationwide. Nationwide will request evidence of delivery from the financial professional in the event of a customer complaint, a routine regulatory inquiry, or as part of sampling transactions for our audit program.

## **What are the Documentation obligations of best interest?**

At the time of recommendation, a financial professional must document any recommendation and the basis of the recommendation. Additionally, documentation is required where any of the following scenarios occur:

- customer refuses to provide relevant suitability information and the transaction is not recommended;
- customer decides to enter into a sales transaction that is not based on a recommendation;
- no recommendation was made;
- a recommendation was made and was later found to have been prepared based on inaccurate material information provided by the consumer;

Nationwide also expects financial professionals to provide evidence upon request that the customer received a copy of the Customer Profile and NAIC Customer Disclosure forms.

## **What are the Documentation obligations of best interest? (continued)**

Nationwide recommends that financial professionals require customers to sign a receipt evidencing that they have received a copy of the Customer Profile, NAIC Customer Disclosure and other state or Nationwide required disclosures.

### **Nationwide Support and In-Good Order Requirements:**

Nationwide developed a checklist to assist financial professionals with NAIC Suitability/Best Interest documentation and record keeping requirements. The checklist reflects Nationwide's current understanding of the 2020 Model Reg. and any future changes will be published on [nationwidefinancial.com](http://nationwidefinancial.com).

The checklist will be available at [nationwidefinancial.com](http://nationwidefinancial.com) or by contacting our National Sales Desk at 1-800-321-6064.

## **How do financial professionals satisfy the Conflict of Interest Obligation of best interest?**

The NAIC defined *material conflicts of interest* to mean a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. It does not include *cash compensation* or *non-cash compensation* (defined above).

Financial professionals need to understand the requirement and identify where it might exist. If a conflict of interest is identified, try to avoid it or reasonably manage and disclose any identified conflicts of interest, including ownership interest to the customer. Talk to your Firm first before taking action.

## **Are there new training requirements?**

Yes. All financial professionals licensed in states that have adopted the 2020 Model Reg. are required to complete one of the following within six (6) months after the state's compliance effective date.<sup>3</sup> All training must be approved by the state.

- A new four (4) credit training course; or
- An additional one-time one (1) credit training course

**Note: Refer to ADDENDUM for state training effective dates.**

### **Nationwide Support and In-Good Order Requirements:**

- For financial professionals who are newly appointed with Nationwide: Nationwide will require completion of the new four (4) hour training prior to submitting new business applications. Nationwide will verify completion of the training prior to accepting the application.
- For financial professionals who have already completed the existing NAIC Suitability 4-hour training course must within 6 months after the state's training effective date, complete one (1) of the following:
  - A new four (4) credit training course approved by the Department of Insurance (Reg. Ed: Recommending Annuities Under the NAIC Best Interest Standard/Course Code 490) **OR**
  - An additional one-time one (1) credit training course approved by the Department of Insurance and provided by the Department of Insurance-approved education provider (Reg Ed: Recommending Annuities Under the New NAIC Best Interest Standard - 1 Hour Update Course /Course code 491)]

<sup>3</sup> States may deviate from the 2020 Model Reg's 6-month effective date and adopt a different training effective date. See ADDENDUM attached to this FAQ for more information.



## **Are there new training requirements? (Continued)**

### **Nationwide Support and In-Good Order Requirements:**

Nationwide will verify completion of this training and will not accept new business applications if the training has not been completed.

- No changes have been made to the Nationwide specific product training (only applicable in states that require product training).

### **Does this apply to wholesaling?**

It does not apply new requirements to wholesaling support as long as there is no material participation or compensation paid with the making of the recommendation, regardless whether there was any direct consumer contact, and the support is based on generic client information, education or marketing material.

### **What are the insurer's responsibilities?**

The 2020 Model Reg. requires insurers<sup>4</sup>:

- to establish and maintain procedures that require significant oversight for training, supervision of transactions and take necessary corrective action where appropriate.
- to ensure its compensation and incentive programs, when taken as a whole, are designed to avoid recommendations by producers that are not in the best interest of consumers.

Insurers may contract with third parties (such as broker-dealer distributors) to establish and maintain a supervisory system (i.e., conduct suitability/best interest reviews).

Insurers may also rely on the safe harbor provision of the 2020 Model Reg. to satisfy the insurer's responsibilities for the best interest care, disclosure, conflicts of interest and documentation requirements. The 2020 Model Reg. has afforded the safe harbor where comparable standards are available to broker-dealers, investment advisors and plan fiduciaries under a retirement plan.

### **Nationwide Support:**

- Where Nationwide relies on the selling Firm's system of supervision and suitability review process, our Office of Compliance Staff will require completion of an annual Due Diligence Questionnaire along with a Suitability and Best Interest Certification. This information will be used to develop a risk-based approach to required oversight. As a result, Compliance will sample suitability and best interest paperwork and may request additional information to meet our regulatory obligations.
- Nationwide is updating its Business Practice and Compliance Guide (Guide) to include best interest. An email communication will be distributed to financial professionals informing them of the updates and provide a direct link to the Guide. The Guide can be found on [nationwidefinancial.com](https://nationwidefinancial.com/resources/support/business-practices) by following this link:

<https://nationwidefinancial.com/resources/support/business-practices>.

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<sup>4</sup> Not intended to be a comprehensive list of carrier responsibilities.