



December 16, 2019

Submitted electronically to:

Jolie Matthews at jmatthews@naic.org

Jennifer McAdam at jmcadam@naic.org

TO: Members of the Annuity Suitability Working Group
Director Jillian Froment, Ohio Department of Insurance
Chair, Annuity Suitability Working Group

FROM: Kim O'Brien, FACC Spokesperson
kim@fixedannuitychoice.com
414-332-9312

RE: Appendix A - Producer Relationship Disclosure Form

Dear Members of the Annuity Suitability Working Group:

We wish to comment briefly on the proposed Producer Relationship Disclosure form contained in Appendix A. We appreciate the Working Group may not be looking for additional comment but we are reacting to submissions by other interested parties which go to the premise of the form itself.

FACC finds it confusing how the Producer Relationship Disclosure form interrelates to the safe harbor. The form purports to require disclosure of what products an agent can offer beyond fixed insurance products including variable products, mutual funds, stocks, bonds, and options. However, such disclosure presupposes that securities brokers and investment advisers will be completing this form and that does not appear to be the case under the expansive safe harbor.

FACC calls this to the attention of the Working Group because it seems inherently inconsistent. The safe harbor on its face establishes a carve out for all brokers and advisers recommending purchase of annuities from complying with the proposed regulation to the extent they comply with "comparable standards". Therefore as a matter of logic brokers and advisers who offer these other products (i.e., variable policies, mutual funds, stocks, bonds, and options) would not be completing this form.

This seeming contradiction is compounded by other interested party commentary. For example, the Joint Trade groups seek clarification adding: "when I sell products other than insurance products, I am not engaging in my capacity as an insurance producer". CEJ proposes numerous changes concerning securities licensure and product offerings. We do not understand such clarifications if only fixed insurance agents selling fixed products will be subject to compliance with this form.



Perhaps the confusion goes back to what the safe harbor means. Is it possible the safe harbor does not exempt brokers and advisers from certain parts of this rule such that they would be obligated to provide these disclosures? The safe harbor says “recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this regulation”. While we presumed this means brokers and advisers are exempt from this rule in its entirety perhaps there is another intent such that recommendations will be judged by Reg BI or a DOL fiduciary standard but brokers and advisers must still comply with duties contained in this regulation including disclosure. We believe this should be addressed and clarified.

It should be noted that FACC has raised numerous questions with the Working Group about the rationale for any safe harbor which exempts securities brokers and other financial professionals from requirements of this best interest regulation. It remains unclear why any safe harbor is needed and whether in the end it will deprive consumers of important protections for annuity products. Among other things, this safe harbor potentially exempts variable products and agents from protections around NGEs, the substantially-benefit standard for replacements, and disclosure of compensation upon request of the consumer, all of which would apply to fixed products and agents. We still believe the safe harbor is unnecessary as discussed in our prior comment letter but either way this matter – the interplay between the safe harbor and the disclosure requirements – should be addressed to avoid internal inconsistency within this regulation.

We think a better understanding of the safe harbor provisions including clarification about when the safe harbor is activated, to whom it applies, and to what recommendations and sales it applies, is needed before turning to and deciding on a standardized disclosure form for consumers. FACC believes any consumer purchasing a fixed annuity deserves the same disclosure requirements of their producer, broker or financial advisor regardless of the license or licenses they hold. FACC further believes any consumer purchasing any annuity – fixed or variable – should enjoy the protections afforded by this regulation.

We respectfully request the Working Group engage in discussion of this interplay between the safe harbor and disclosure form to ensure the rule is properly understood, internally consistent, and workable for the benefit of all agents and consumers.

Respectfully submitted,

Kim O'Brien
FACC Campaign
Vice Chair Americans for Asset Protection