



Speaks Out on Suitability

NAIFA-New York State president David J. Reedy presented testimony in Buffalo on August 6, at a New York Insurance Department public hearing on the issue of suitability in life and annuity sales

The testimony was given on behalf of the state and national associations.

The Buffalo hearing is the first of four scheduled across the state to focus on the Department's intent to determine "if there is a problem concerning unsuitable sales of life insurance and annuities in New York, and if so, what should be done about it.", according to Acting Superintendent Kermit Brooks.

In addressing the hearing panel, Reedy stated that it was yet to be determined if a problem existed with suitability of life insurance sales, but recommend that the Department promulgate a new regulation to set forth standards and procedures for suitability in sales of annuities.

He proposed that the department adopt the current language of NAIC's Suitability in Annuity Transactions Model Regulation.

"Uniform adoption and implementation of this Model can go a long way to enhancing consumer satisfaction with their annuity purchase, he stated. " The Model sets high standards to ensure consumers are purchasing an annuity product that is appropriate for their financial needs, and requires the producer to review, among other things, the consumer's financial and tax status, investment objectives and any other information relevant to the sale of an annuity product."

He emphasized that NAIFA-NYS and NAIFA support the sale of appropriate and suitable life insurance products, but that "any promulgation of a new life insurance suitability regulation should be in response to the need for such a regulation."

Reedy told the Department that NAIFA-NYS and NAIFA stood ready to offer further comments on any proposal that might come from the findings of the hearings.

Designated representatives of NAIFA-NYS will also present statements by hearings in Albany, New York City and Long Island.

The text of Mr. Reedy's statement follows:

I am pleased to submit this testimony on behalf of NAIFA and NAIFA-New York State.

Our testimony will focus on the questions posed by the Department in the Hearing Notice

Question #1: Is there a problem concerning unsuitable sales of life insurance and annuities in New York.

The Notice of Public Hearing states that the purpose of the hearings is to “gather information about the issue of suitability...and to help ascertain whether additional oversight and regulation are needed to protect consumers” and “to hear any concerns that the public may have about unsuitable sales”.

It seems clear that the answer to the first question is still to be determined for the consumers of New York generally. We cannot speak for those members of the public who might testify at hearings as to their experiences with respect to the current state of the annuity and life insurance marketplace from their perspective.

I can, however, provide some insight with regard to those New York consumers who are my clients.

The vast majority of my clients are those persons with whom I have had discussion and extensive gathering of information as to their insurance needs, financial situation, goals and objectives.

With regard to these clients, I can state that there was no problem with suitability because the particular product I recommended, and which they ultimately purchased, was presented to them as an appropriate product for their current situation at that time, and was offered to my clients as part of one or more products that were in fact appropriate or suitable in meeting their unique set of needs.

Each of my clients' financial and family/business situation is “unique” and fact sensitive, and the particular product(s) recommended in my practice are those that will meet that particular client's need at that moment in time, always taking into consideration their financial ability to pay for a particular product that in turn meets a particular need.

A much smaller group of my clients are those persons who have the financial background and expertise, and/or are fortunate enough to have financially astute legal advice and/or other advisors who have conferred with them and made suggestions about annuity or life insurance purchases. These clients do not seek a recommendation from me. Rather, in these rare situations, the customer for the most part simply places an order with me. I make no recommendation in these cases. Even in these circumstances I have not experienced any customer later indicating that an unsuitable sale had taken place.

Question #2: Whether the New York Insurance Department should promulgate a new regulation to bar unsuitable sales of life insurance and annuities.

We would recommend that the Department promulgate a new regulation to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products.

As you are aware, the NAIC's Suitability in Annuity Transactions Model Regulation (or some form thereof) has been adopted in over 40 jurisdictions. Uniform adoption and implementation of this Model can go a long way to enhancing consumer satisfaction with their annuity purchase. The Model sets high standards to ensure consumers are purchasing an annuity product that is appropriate for their financial needs, and requires the producer to review, among other things, the consumer's financial and tax status, investment objectives and any other information relevant to the sale of an annuity product.

Concerning the promulgation of a new regulation to deal with the unsuitable sales of life insurance, our recommendation would be to first ascertain whether there is a sufficiently demonstrated need for such a regulation.

These hearings will hopefully be able to shed some light on that question. NAIFA-NYS supports the sale of appropriate and suitable life insurance products, but any promulgation of a new life insurance suitability regulation should be in response to the need for such a regulation.

We also must state that our association would need to formally consider the question before we could officially endorse the Department's initiation of the development of a suitability regulation for life insurance.

Question #3: Whether any potential New York regulation should be based on the current NAIC Model, the draft revision of the NAIC Model, or the FINRA rules concerning suitability.

Development of a regulation concerning unsuitable sales of annuities should be based on the current NAIC Model, **and not** the draft revision of the Model being worked on by the NAIC's Suitability of Annuity Sales Working Group.

It is our understanding from discussions with our national affiliate association, the National Association of Insurance and Financial Advisors ("NAIFA") that the NAIFA feels **that** there are serious problems with the revisions to the Model Regulation proposed by the Working Group.

The proposed revisions to the Model essentially dismantle the cornerstones of the regulation in crucial areas, such as the ability for insurers to contract out certain suitability functions to third parties, and the supervision and monitoring of suitability recommendations. The suggested revisions would result in an extremely prescriptive framework that does not recognize the various distribution channels that exist in the marketplace today.

The NAIFA does not agree that the existing regulatory framework for annuity suitability protections has failed. The current NAIC Model, however, can be enhanced, and there are efforts underway at the present time to share those enhancements with the decision makers at the NAIC.

Question #4: Whether any potential New York regulation should apply to the sale of all life insurance policies and annuity contracts or some subset thereof.

We believe that a New York suitability regulation should apply to all annuities.

The current NAIC Model applies "to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended". In the NAIC Model, an annuity is defined as "a fixed or variable annuity that is individually solicited..." In a later section of the Model, it clarifies that compliance with FINRA suitability and supervision rules shall satisfy requirements under the Model for variable annuities.

We therefore feel that both fixed and variable annuities should be subject to the requirements of any suitability regulation developed by the Department.

Question #5: Whether Regulation 60 should be revised to create more meaningful disclosures and/or reduce the costs of compliance.

Before revisions are considered to Regulation 60, it is our view that it should be determined that the prescribed and relevant disclosures under the current regulation actually need to be more meaningful, and that the current costs of compliance are too high.

In the event that such determinations are made, and work on a revised Regulation 60 is undertaken, we would recommend that consideration be given to the NAIC's Life Insurance and Annuities Replacement Model Regulation. It is a Model that has been promulgated in numerous states, and many believe that it has been effective in protecting the interests of life insurance and annuity purchasers by establishing minimum standards of conduct in replacement or financed purchase transactions.

On behalf of our associations, I thank the Department for this opportunity to present our views.

We look forward to continuing the discussion and working with the Department on this important issue.