Consumer and insurance groups disagree on advice standard for annuity sales

Consumer groups and American Council of Life Insurers square off over how stringent the investment advice standard should be

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An effort by state insurance regulators to raise investment-advice standards for annuity sales appears to be driving a wedge between consumer organizations and a life insurance trade association.

In **light of the Labor Department's fiduciary rule,** the National Association of Insurance Commissioners established a working group in April to **review its suitability standard for annuity sales**.

In advance of the working group's next meeting on **Sunday in Philadelphia**, the NAIC has been receiving input on its review, including a proposal for a "uniform standard of care" submitted by the American Council of Life Insurers.

Under the **ACLI framework**, a broker or insurance representative would be making a recommendation in the best interest of a consumer when he or she makes no misleading statements, fully discloses fees and compensation and "avoids, discloses or reasonably manages material conflicts of interest."

The ACLI approach drew a rebuke from 14 consumers groups in a **comment letter** to the NAIC working group. The organizations, which include the AFL-CIO, Better Markets, the Center for Economic Justice and the Consumer Federation of America, said that ACLI's proposal did not restrict conflicts of interest.

"Instead, the ACLI proposal would give firms a choice of disclosing, managing or avoiding conflicts," states the letter, which also was signed by 10 individuals identified as NAIC consumer representatives. "The predictable outcome is industrywide practice of addressing conflicts through disclosure alone, despite overwhelming evidence that such an approach is ineffective in protecting consumers from the harmful impacts of conflicts."

The ACLI supports a uniform standard of care that can be enforced by the Securities and Exchange Commission, the

DOL and state regulators, said Jim Szostek, ACLI vice president, taxes and retirement security.

"The [DOL] fiduciary regulation is causing significant harm to American investors, who are losing access to advice," Mr. Szostek said in a statement. "The elements in our outline are aimed at providing a better solution that significantly enhances the current NAIC suitability standard. It works to enhance existing standards enforced by state insurance regulators, the SEC and Finra [the broker-dealer regulator], bringing to bear decades of experience in enforcing disclosure-based rules. In fact, the DOL failed to provide any meaningful evidence that these disclosure-based rules are ineffective in protecting consumers."

Inappropriate sales of variable and fixed annuities, which provide an income stream in retirement but can be complicated and costly, have been cited by DOL rule proponents as examples of why the regulation is needed.

The current NAIC model suitability regulation requires that a recommendation for an annuity purchase be suitable for a client based on his or her investment objectives, time line, net worth, liquidity needs and risk tolerance, among other criteria. Insurance is regulated at the state level, and the NAIC model rule has been adopted by 40 states.

In their letter, the consumer groups outlined seven "key principles" the NAIC should follow in reforming its annuity suitability standard, including "substantive prohibitions on conflicts of interest as opposed to 'managing' or 'disclosing'" them.

"In addition to requiring avoidance of conflicts, it must include a requirement to engage in a prudent process and document the basis on which the insurer and producer concluded the product recommended was the best of the available options for the customer," the letter states.

The ACLI model differed on that point, too.

"The uniform standard of care does not require a recommendation of the least expensive or 'best' product available," the ACLI diagram states.

The ACLI also said that its advice standard applies on a transaction basis, meaning that there is no ongoing duty of care for the adviser beyond the point of sale. It also allows the sale of proprietary products and the receipt of compensation, such as commissions, that vary according to the product. The ACLI framework closely resembles the best-interest standard outlined in **recent House legislation** supported by Republican lawmakers.

The DOL rule is being reviewed under a directive from President Donald J. Trump that could lead to a **delay of the Jan. 1 final implementation date**or other result in other changes.

Under the DOL regulation, brokers would have to adhere to a fiduciary standard, which is the standard that currently governors investment advisers. Supporters say the DOL rule mitigates broker conflicts that lead to the sales of inappropriate high-fee investment products that erode savings. Industry opponents say the regulation is too complex and costly and will force brokers to abandon savers with modest accounts.