



Electronically Submitted to brian.fjeldheim@dcbs.oregon.gov

May 29, 2024

Mr. Brian Fjeldheim
Division of Financial Regulation
Department of Consumer and Business Services

Re: Rulemaking – Best Interest Standard SB 536

Dear Mr. Fjeldheim:

On behalf of our members, the undersigned associations write to provide comments on the rulemaking following the passage of SB 536, now codified at ORS 743.262. Thank you for including us in the Rulemaking Advisory Committee (RAC) meetings, and we appreciate the hard work of the Division regarding this rulemaking effort. While we appreciate the Division making some changes responsive to comments provided during the RAC meetings, we still have significant concerns with the proposed rule 836-080-0172 - Section 3(a) and Exhibits 1a, 2a, and 3a under 836-080-0172. They deviate substantially from the NAIC Suitability in Annuity Transactions Model Regulation (“NAIC Model”)¹ forms and create compliance requirements that are not contained in and do not align with the clear statutory language of SB 536. We urge the Division to continue use of the NAIC Model forms now called for in the temporary rule, for all the reasons outlined below.

First, IRI commends Oregon on its 2023 enactment of SB 536, which incorporates the 2020 best interest updates to the NAIC Model. Support for the NAIC Model in the Legislature was broad-based and bipartisan, and Governor Kotek signed a version of the bill that fully aligns with the NAIC Model language. This new statute contains a robust, heightened standard of conduct that requires all sales and recommendations of annuities to be in the best interest of a consumer. The new forms as required by the NAIC Model (Appendices A, B, and C of the NAIC Model) and SB 536 are intended to provide appropriate disclosure to the consumer. Appendix A, for example, informs the consumer about the product types that a producer can sell and how they are paid

¹ While the official name of the NAIC Model refers to a suitability standard, the 2020 version replaced the suitability standard imposed under prior versions with a best interest standard that aligns with the standard established under Reg BI. The NAIC intentionally decided not to change the official name of the NAIC Model in order to avoid any uncertainty with respect to the requirements of Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).

for their work, among other items, as enumerated in the NAIC Model and in SB 536. We support the use of the NAIC Model Appendices as they were developed through a robust process, and they appropriately align with the requirements of the best interest standard. The NAIC Model Appendices are now utilized in essentially all states that have adopted the NAIC's best interest updates.

We continue to support the use of the NAIC Model Appendices A, B, and C, which have now been utilized in the marketplace since adoption of the temporary rule. We believe that these forms, in conjunction with the new requirements of SB 536, provide important consumer protections. SB 536 makes clear that a producer must act in the best interest of a consumer, and the use of the forms themselves should be informative that a producer is exercising the duty of care mandated by SB 536. Uniformity among the states is critical to avoid confusion for consumers, insurers, and producers. Producers are often licensed in more than one state, and especially for those that reside close to a state border, they often serve consumers in different states. Forms that have significantly different content send mixed messages to producers as to the requirements and the applicable standard required for a particular annuity recommendation. Further, consumers may work with producers in two different states, and it also creates misunderstanding when different information is provided to them about the applicable standard required for a particular annuity recommendation. Inconsistencies between disclosure forms in states that have uniformly adopted the NAIC Model could lead to the misperception that consumers are getting weaker protections in one state versus another.

Additionally, the specific language that has been added to 836-080-0172 – Section 3(a) and Exhibits 1a-3a is particularly concerning because it creates new compliance requirements that go above and beyond what is required by the statute. Our members support the best interest requirements and are complying with this heightened standard of conduct in 45 other states; however, the deviations on the Oregon forms create uncertainty and confusion for our members and ultimately, for consumers.

In addition to these overarching concerns, we've also outlined our specific concerns with each exhibit below to demonstrate why we believe moving forward with Exhibits 1, 2, and 3, which align with the NAIC Model Appendices, is the most appropriate course of action:

Exhibit 1a:

The checkbox "I have provided You with a written copy of the annuity recommendation, including the basis of how it was determined that the recommended product effectively meets your financial situation, insurance needs, and financial objectives" appears to create a new compliance requirement beyond what is currently required by SB 536.

SB 536 requires a producer to communicate the basis of a recommendation to the consumer and to record in writing the substance of and basis for the producer's recommendation, but it

does not mandate that this record be provided to the consumer or specify what form it should take. Mandating this requirement goes beyond the requirements of the statute, thereby creating uncertainty about what level of information must be included to satisfy this new requirement. Can all the documentation that a producer maintains to support their recommendation be reduced to a “written copy” for the consumer? How will producers know if they are meeting this requirement? These are a few examples of the questions and concerns that create uncertainty for producers (from a compliance perspective) and insurers (from a supervision and review standpoint).

Also, while we appreciate the removal of the language from the first draft that did not align with the statutory requirements, we still believe the updated language that deviates from the NAIC Model Appendix A is unnecessary. The requirements of ORS 743.262 now apply to all annuity recommendations and sales regardless of whether they are listed out on this form. It is unclear why the language from the statute needs to be restated on this form.

Exhibit 2a:

The question “What duty of care do I owe You, the consumer?” and the following checkbox create a separate, impractical compliance requirement beyond what is required by SB 536. Practically speaking, a consumer already needs to review or sign off on any consumer profile information that they are providing to the producer. It does not make sense to then require the producer to provide a separate written list of the information that the consumer refused to provide. In addition to being impractical and unwieldy, it’s not clear that this would provide any additional benefit for the consumer or additional protection to a producer. We believe that the NAIC Model Appendix B (and Exhibit 2) is sufficient to provide protection for the consumer and the producer in this scenario.

Exhibit 3a:

The question “What duty of care do I owe You, the consumer?” and the following checkbox are not necessary on this form. While we note that the checkbox text does not align with the question, it also directly conflicts with the basis of the form. The purpose of the form is to document and disclose that the consumer is purchasing an annuity that is not based on a recommendation. In this scenario, it is illogical to include language inferring that a recommendation would be provided to the consumer when that consumer is proceeding with a purchase that has not been recommended. We believe that the NAIC Model Appendix C (and Exhibit 3) is sufficient to provide protection for the consumer and the producer in this scenario, and this additional language is unnecessary.

While we strongly urge the Division to simply continue use of the NAIC Model Appendices as they appear in the temporary rule, should Exhibits 1a-3a move forward, there will be significant compliance and implementation costs, because of this new rule. Additionally, the timeline that

the Division is contemplating is extremely concerning. To require compliance within a matter of weeks is unreasonable and impractical. System changes of this nature need months, not weeks, of lead time, to program internal systems, update policies and procedures, and prep documents to callout and explain these Oregon-specific forms, among others. Some insurers also work with third-party administrator partners that require significant notice before updating their programming. Requiring use of Oregon-specific forms that impose new compliance requirements by the end of June creates a significant, unreasonable burden for companies without adding any meaningful protections for consumers. As such, we believe the most appropriate approach, which also supports consistency among the states that have adopted the NAIC Model, is to adopt the NAIC Model Appendices, so insurers and producers can proceed with use of the NAIC Model Appendices as they have been doing since the beginning of the year with no noted issues.

Please don't hesitate to reach out with any questions, or if there is anything else we can do to assist at this time.

Sincerely,

American Council of Life Insurers (ACLI)

Finseca

Insured Retirement Institute (IRI)

National Association for Fixed Annuities (NAFA)

National Association of Insurance and Financial Advisors (NAIFA)