

1 TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

2 \_\_\_\_\_  
3 In Re:

4 NOTICE OF RULEMAKING HEARING

5 CHAPTER 0780-01-86

6 SUITABILITY IN ANNUITY

7 TRANSACTIONS AMENDMENTS  
8 \_\_\_\_\_

9 RULEMAKING HEARING

10 DATE: Thursday, August 4, 2022

11 TIME: 10:03 a.m.

12 BEFORE: Jenny Taylor, Associate General Counsel

13 LOCATION: Davy Crockett Tower

14 500 James Robertson Parkway, Conference

15 Room 1B

16 Nashville, TN 37243

17 REPORTED BY: Katherine Wyatt

18 JOB NO.: 5341266  
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A P P E A R A N C E S

ON BEHALF OF FARM BUREAU:

Mr. Benjamin Sanders  
Executive Director of Government Affairs

ON BEHALF OF AMERICAN COUNCIL OF LIFE INSURERS:

Ms. Laura Leigh Latta  
Regional Vice President, State Government Affairs

ON BEHALF OF NAIFA TENNESSEE

Mr. Matt Benson  
Member, Board of Directors

ALSO PRESENT:

Bill Huddleston, Assistant Commissioner of  
Insurance  
Brian Hoffmeister, Director of Policy Analysis  
Section

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I N D E X

E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Exhibit 1	Notice of Rulemaking and red line	5/

(Exhibit attached.)

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P R O C E E D I N G S

MS TAYLOR: Good morning. My name is Jenny Taylor. I serve as Associate General Counsel and Supervising Attorney for the Insurance Division of the Tennessee Department of Commerce and Insurance.

Today is Thursday, August 4, 2022, at five after 10:00 Central Time.

We are here for a Rulemaking Hearing regarding rules related to Suitability in Annuity Transactions specifically concerning proposed amendments to Rule Chapter 0780-01-86.

We are located at 500 James Robertson Parkway, Davy Crockett Tower, Conference Room 1B.

We have copies of the red-line version; they may be gone now but we can provide copies after the meeting if anybody needs that. You can follow along with that. And it reflects the proposed amendments we will be discussing today.

The Notice of Rulemaking was filed with the Secretary of State with the red-line version and published on the Administrative Register on the Secretary of State's website on June 3rd. The Notice of Rulemaking and red line are going to be given to the court reporter as Exhibits to the record.

1 (Exhibit 1 was marked for  
2 identification.)

3 MS. TAYLOR: So I'm going to summarize  
4 the descriptions of the changes or the proposed  
5 changes to the rules. I'm not going to read them  
6 verbatim. But after the summary during comments we  
7 can go back and talk about specific portions of the  
8 rules.

9 It will take me a few minutes to  
10 summarize a couple of pages so please bear with me.

11 The rules proposed amend Chapter  
12 0780-01-86 Suitability in Annuity Transactions by  
13 incorporating a best interest standard which is  
14 applicable when licensed insurance producers recommend  
15 or sell an annuity to a customer. These changes  
16 reflect amendments recently made to the NAIC  
17 Suitability in Annuity Transactions Model Reg.

18 Specifically rule 0780-1-86-.06 Duties  
19 of Insurers and Producers is being amended by  
20 requiring producers to act in the best interest of the  
21 consumer under the circumstances known at the time a  
22 recommendation for sale is made without placing the  
23 producers or the insureds financial interests ahead of  
24 the consumer's interest. The producers must satisfy

1 obligations regarding care, disclosure, conflict of  
2 interest and documentation.

3 The amended rule includes a Care  
4 Obligation requiring the producer to attempt to know  
5 and understand the financial situation, insurance  
6 needs, and objectives of the consumer before making a  
7 recommendation. Producers are then required to  
8 communicate the basis for the recommendations.

9 The amended rule requires the producer  
10 to disclose information to the consumer prior to  
11 recommendation or sale of an annuity on a form that is  
12 substantially similar to Appendix A which is currently  
13 in the rules. The information that must be provided  
14 includes information regarding the producer's and  
15 consumer's roles in the transactions and affirmative  
16 statement regarding the producer's license and  
17 authorization to sell certain annuity products, the  
18 producers ensure appointment information, and a  
19 description of the compensation to be received by the  
20 producer for the sale of the recommended annuity.

21 An example of this disclosure can be  
22 found, and I apologize, Appendix A is a newly added  
23 Appendix A. So that example should be in the  
24 red-line.

1           The amended rule also includes a  
2           conflict of interest obligation which requires the  
3           producer to identify and avoid or reasonably manage  
4           and disclose material conflicts of interests including  
5           material conflicts of interest related to an ownership  
6           interest.

7           The amended rule includes a  
8           documentation obligation which requires the producer  
9           to provide certain information at the time of the  
10          recommendation or sale including a written record of  
11          any recommendation and the basis for the  
12          recommendation. The producer must obtain a consumer  
13          signed statement documenting the consumer's refusal to  
14          provide certain necessary profile information. An  
15          example of this disclosure can be found in the newly  
16          added Appendix B.

17          A consumer's acknowledgement that  
18          certain transactions are not recommended must also be  
19          provided if a customer decides to enter into an  
20          annuity transaction that is not based on the  
21          producer's recommendation. An example of this  
22          disclosure can be found in Appendix C.

23          The amended rule includes requirement  
24          that insureds must establish and maintain a

1 supervisory system. The current rule includes such a  
2 requirement, however, the new language includes  
3 additional steps that insurers must take regarding  
4 procedures to assess whether a producer gives  
5 consumers the required information regarding the  
6 annuity transaction, procedures to identify and  
7 address suspicious consumer's refusal to provide  
8 profile information, and procedures to address sales  
9 contests, sales quotas, bonuses, or other compensation  
10 based on the volume of sales of the specific annuity  
11 with a limited period of time.

12           The rules add information to the  
13 current rule regarding safe harbor provisions. Under  
14 the current rule sales and compliance with FINRA  
15 requirements pertaining to suitability and supervision  
16 of annuity transactions are deemed to satisfy the  
17 requirements of this rule. The new rule replaces the  
18 FINRA requirements with a comparable standard  
19 requirement. The comparable standards include FINRA  
20 and also references regulations for investment  
21 advisors and plan fiduciaries or fiduciaries.  
22 Recommendations and sales of annuities made by  
23 financial professionals in compliance with business  
24 rules and controls that satisfy comparable standard



1 will provide a safe harbor for financial  
2 professionals.

3           So that is the summary. And before we  
4 go to comments I do have written comments that have  
5 been submitted prior to this hearing. I will read  
6 those and then if anyone here is a writer of those  
7 comments, you can add additional, come up here today  
8 and speak. If you think I've stated your comment  
9 incorrectly, please stand up and correct me. Just  
10 approach the podium and identify yourself if you  
11 would.

12           So before the comments I want to make  
13 one correction that I have made to the rules. It was  
14 pointed out to me before this hearing. So a change  
15 has been made in 0780-01-86.07 Subdivision (f), little  
16 f. Under the red-line version that you would see up  
17 until it is published, it references the date of July  
18 1, 2022, which obviously has passed. So that has been  
19 deleted and replaced with six months from the  
20 effective date of this rule. So the context is the  
21 producer training will not be required until six  
22 months from the effective date of this rule. So that  
23 is a correction I made and it is included in some of  
24 the comments but it was really something I needed to

1 correct anyway.

2 I will go through and just read these  
3 into the record and then we can take comments.

4 We have comments submitted by the law  
5 firm Butler Snow and one of the comments was  
6 pertaining to the correction that I just described  
7 regarding the training requirements. So I will not  
8 read that.

9 The second one from Butler Snow was  
10 about the supervision system which through looking at  
11 the red line that's going to be at 0780-0186 at .06.  
12 So .06 is where all the major changes were made and  
13 the specific change regarding the supervision system  
14 or the paragraph there was an incorrect citation and  
15 so Butler Snow pointed out that the citation was  
16 referencing subparagraph (b) and they believed that  
17 should actually be a cite to a different paragraph to  
18 specifically referencing transactions not based on the  
19 recommendation.

20 And they also commented that under (c),  
21 little c of that same section on supervision there's a  
22 missing reference to subparagraph 2 at the end of  
23 little (c)1. So all that has been understood and I  
24 will view and it probably is right and I will make

1 that correction. I haven't made that, that's not in  
2 front of me today, but the comments have been received  
3 and will be reviewed carefully to make sure those  
4 references are correct. Basically when the rules were  
5 written it was sometimes difficult from the model rule  
6 to make sure the translation to the 10 c citations  
7 were correct. So that will be reviewed carefully.

8 Another comment was that the rules use  
9 the terms insurance producer, so these are not from  
10 Butler Snow, these are just other comments. The  
11 definition of insurance producer and producer is used  
12 interchangeably through the rules. And so the comment  
13 is for us or as the department to pick one term or the  
14 other to use that consistently throughout. And so  
15 that is all received and also will be reviewed.

16 We also received a comment from the  
17 Insured Retirement Institute. It is writing to  
18 support the proposed amendments. It is understood by  
19 them that we are following the model regulation and  
20 they are pleased to support that. And they believe  
21 that no modifications should be made to what is  
22 currently being published in the context of taking  
23 away some of the consumer protection that they believe  
24 these rules are adding. So the specific statement

1 from this commenter if the department decides to  
2 pursue any modifications to these current proposed  
3 rules, that we would not substantially deviate from  
4 the model and that a new comment period be opened in  
5 order to allow them sufficient time to provide  
6 meaningful feedback if we were going to make such  
7 modifications.

8 They also went into several detailed  
9 portions of the rules that -- they recommended some  
10 language be struck from the purpose section of the  
11 rules which is actually .01 which is main purpose.  
12 Some of that language I believe is probably from the  
13 current rules and it was interwoven and so I think  
14 they are probably commenting to say stick to the exact  
15 model language as it appears.

16 They also commented on the definition  
17 in the definition section of replacement and wanted  
18 some additional language added to that definition.

19 And they also commented that one of the  
20 cross references in the supervision system portion of  
21 the rule which is at .06 paragraph 3 that there was an  
22 incorrect cross reference there. And so again those  
23 cross references could be tricky and so any comments  
24 on those will be reviewed carefully and make sure that

1 we cited that correctly.

2 They also commented on the effective  
3 date for the training course which we've already  
4 addressed.

5 And they also commented that the  
6 drafting notes from the appendices be removed. So  
7 their comment is that they are intended to provide  
8 guidance on the content and form and not for inclusion  
9 on the actual forms.

10 The last comment from them requested  
11 six months for implementation.

12 And so that's the summary of the rules  
13 from the Insured Retirement Institute.

14 So the last section of comments that I  
15 received are from Farm Bureau. I'm not sure if Mr.  
16 Sanders wants to come up now and work with me.

17 So some of these comments were received  
18 prior to the hearing. Some were received, updated  
19 today. So I'm struggling -- I don't want to take  
20 everyone's time but I think we could read these into  
21 the record pretty easily. And Mr. Sanders, if you'll  
22 come up I'll sort of introduce each section, you can  
23 just comment as you want to. First just introduce  
24 yourself so the court reporter can get your name.

1 MR. SANDERS: Sure. Thank you. I'm  
2 Benjamin Sanders, here representing Tennessee Farmers  
3 Life Insurance Company, commonly known as Farm Bureau  
4 Insurance. Do I need to repeat all that?

5 MS. TAYLOR: No. As we go they might  
6 not be able to hear you in the back.

7 MR. SANDERS: They may not want to hear  
8 me in the back quite frankly.

9 MS. TAYLOR: So the easiest way I think  
10 is I'll just introduce each section I think you  
11 believe you have a comment on so the court reporter  
12 and the transcript will reflect exactly the context of  
13 what we're commenting on.

14 So the first one I see, Mr. Sanders, is  
15 in the definition section, specifically the definition  
16 of material conflict of interest.

17 MR. SANDERS: Yes, ma'am. Our concern  
18 with this portion is that the model language says what  
19 a reasonable person would expect. The problem that we  
20 have seen is that we can have different definitions of  
21 reasonable. And all that ultimately matters is what a  
22 department auditor is going to believe is reasonable  
23 down the road. The example of this for us would be  
24 stock ownership. As an example if a agent, excuse me,

1 if a producer sells life insurance for a company and  
2 owns one share of stock in that company, we would not  
3 consider that a material conflict of interest. It's  
4 possible that someone else could say they reasonably  
5 believe that is a conflict of interest. We believe  
6 that this should be flushed out to accommodate some of  
7 those situations.

8 MS. TAYLOR: Okay. Thank you. The  
9 next comment was on the definition of recommendation.

10 MR. SANDERS: Yes, ma'am. Our concern  
11 with this is that in small towns especially in rural  
12 areas which is what the lion share of our business is,  
13 our insurance producers who are captive agents often  
14 find themselves in what I would call informal  
15 conversations. They're at the store. They're at a  
16 ballgame. Somebody says, hey, let me ask you about  
17 this product or that product. While we would not  
18 consider those conversations to be a formal  
19 recommendation, they could be construed to be that  
20 depending on the conversation. What we want to avoid  
21 is our agents having to go back to their office and  
22 document every unscheduled conversation that they  
23 have. We believe that the definition should be  
24 enlarged, enhanced to include those kind of

1 situations.

2 MS. TAYLOR: Just to make sure I  
3 understand the version you submitted with the  
4 comments, it looks like you added some language that  
5 you would prefer.

6 MR. SANDERS: That's correct. In our  
7 previous comments we suggested adding language that  
8 says recommendation does not include informal  
9 discussions between a consumer and insurance producer  
10 involving general information about annuities that  
11 does not include an official recommendation. We would  
12 be very comfortable with this language. Alternatively  
13 we would be comfortable with the department providing  
14 a subsequent bulletin to elucidate that that is not  
15 included in the definition. We understand there is  
16 sensitivity to adhering to the model and we want to be  
17 sensitive to that.

18 MS. TAYLOR: Okay. Thank you. The  
19 next comment I see are going to the next rule which is  
20 where the major portion of all the changes are made  
21 .06 duties of insurers and insurance producers. It  
22 looks like in (a) 1 regarding the Care Obligation that  
23 there's no comment at this time on that?

24 MR. SANDERS: That's correct. We have



1 previously submitted comments to the department on  
2 concerns of some of this language. Our good friends  
3 at ACLI have convinced us that our concerns are  
4 unwarranted and we are happy to revoke our comments on  
5 that.

6 MS. TAYLOR: Thank you. The next and I  
7 apologize page numbers are hard for me to correspond  
8 with the audience members but I'm trying to describe  
9 where we are going here. Next page disclosure  
10 obligation it looks like there is a comment on the  
11 first paragraph 1 regarding what is supposed to happen  
12 prior to the recommendation or sale.

13 MR. SANDERS: Yes, ma'am. Is this in  
14 Item 1 you're referring to the language that says a  
15 form substantially similar?

16 MS. TAYLOR: Yes, yes.

17 MR. SANDERS: We believe that some  
18 additional language should be added to give companies  
19 flexibility in developing the formatting of these  
20 forms. We suggest language similar to something like  
21 the form substantially similar or comparable in  
22 function or language such as substantially similar in  
23 content and function to Appendix A. If the goal is to  
24 standardize all forms that companies have, we

1 understand that. If the goal is to make sure that  
2 consumers have the appropriate information, that's a  
3 different matter. We don't believe that companies  
4 should all be forced into one size fits all on  
5 formatting and believe that companies should have the  
6 flexibility to change their literal forms in a way  
7 that best serves consumers. And if I may speak into  
8 the record our rationale on this.

9 MS. TAYLOR: Go ahead, please.

10 MR. SANDERS: We have members in all 95  
11 counties. The average size of our annuity is \$21,700  
12 which is relatively small. The type of consumer that  
13 takes out these annuities is either coming to their  
14 local Farm Bureau office or they are going to the bank  
15 to get a CD. Today people walk in and when they see a  
16 stack of paperwork and all these disclosures and all  
17 these forms they just turn around and leave. And they  
18 need that annuity because it's better for them than a  
19 CD from a return standpoint. People that are rolling  
20 their whole life savings into a \$20,000 annuity is  
21 very different from people that are comfortable going  
22 into brokerage houses. And what we are anticipating  
23 with this is that as we continue to grow that stack of  
24 paperwork it's going to be a disincentive for

1 consumers to go through the process. We always look  
2 for ways to simplify things as much as possible for  
3 consumers.

4 MS. TAYLOR: Okay. Thank you. So the  
5 next set of comments, same section regarding  
6 disclosure obligations moving to specifically it looks  
7 like the compensation disclosure obligation. It looks  
8 like some of the -- you've suggested maybe it's moved  
9 to a different section of the rules. I'm not quite  
10 sure of the context of that.

11 MR. SANDERS: Sure. I can speak to the  
12 entirety of it if you'd like.

13 MS. TAYLOR: Yes, please.

14 MR. SANDERS: Two points first for  
15 readability we suggest from a basic rule formatting  
16 standpoint that all the compensation disclosures be  
17 included in one section instead of dividing into two.  
18 That makes no substantive difference from compliance  
19 but we believe it reads a little bit better. Down the  
20 road someone is going to be reading these rules that  
21 has not spent as much time as we have and we believe  
22 that could be helpful.

23 Our second point on compensation and  
24 also I'll ask your indulgence, I'd like to walk

1 through some of our rationale on this because we've  
2 made a little bit of noise about this.

3 MS. TAYLOR: Okay.

4 MR. SANDERS: The notion of disclosing  
5 compensation is relatively new in the insurance world.  
6 We've been told a number of reasons by our good  
7 friends throughout the industry of why it's important  
8 to disclose annuity compensation. For simplicity I'm  
9 going to go through those reasons and give our  
10 response to them. And then I'll get to my main point.  
11 But I want to get this in the record.

12 We've been told that philosophically  
13 that consumers are entitled to know what producers  
14 make when they sell annuities. We generally reject  
15 that philosophy. We believe that that's true that  
16 consumers should be entitled to that information for  
17 sales of any kind from insurance to pharmaceuticals to  
18 cars to TVs. We don't believe that is an entitlement  
19 to the consumer.

20 We have heard that disclosure  
21 compensation allows the consumer to make a better  
22 decision. And our question is how. Unless the  
23 salesperson's compensation comes out of my pocket as a  
24 consumer then it doesn't help me make a better

1 decision because it is not included in the product  
2 that I get. It doesn't help me shop for a better  
3 product. The only benefit it tells me how much  
4 they're making and it makes no substantive difference  
5 to me as a consumer.

6           And then the third point we've heard is  
7 that transparency on compensation is required to keep  
8 insurance producers honest. And I apologize if this  
9 might sound a bit peppery. For someone that  
10 represents 500 agents across the state that's a bit  
11 insulting. Our agents, not just Farm Bureau, but all  
12 insurance agents have a moral, and ethical, and legal  
13 obligation to recommend products that are in the best  
14 interest of the consumer regardless of how they are  
15 being compensated. That same obligation is also  
16 across all sales, whether it's cars, or TVs,  
17 pharmaceuticals, or doctors, or whoever; salespeople  
18 have an obligation to do that. If we don't trust  
19 someone that is making a recommendation to us as a  
20 consumer, we shouldn't be doing business with them.  
21 We believe our agents make recommendations based on  
22 the best interest of the consumer and that their  
23 compensation has nothing to do with it. And to  
24 suggest otherwise is a bit of a stain on what we

1 consider a really important industry in Tennessee.

2 Now practically speaking and this is  
3 less peppery, thank you for your indulgence on that,  
4 practically speaking this also underscores our strong  
5 belief that in the insurance industry one size doesn't  
6 fit all. This kind of compensation disclosure might  
7 fit well in a brokerage house or financial advising  
8 firm. But when you take a captive agency force that  
9 sells for one P & C Company and one Life Company and  
10 when most of those consumers for those agents have  
11 their whole portfolio of business this is extremely  
12 out of place. If I'm talking to my Farm Bureau agent  
13 and he discloses annuity compensation and five minutes  
14 later I'm talking about homeowners and then auto and  
15 then life and I hear what he's making on annuities but  
16 I don't have the chance or the opportunity or the  
17 conversation to hear about those others it creates a  
18 significant awkwardness. So best case scenario it  
19 creates an awkward situation. Worst case scenario  
20 consumers get frustrated and they walk out.

21 In a lot of counties in Tennessee  
22 consumers have one choice to talk face-to-face to an  
23 agent and that's their Farm Bureau agent because in  
24 all these small towns, a lot of small towns there's

1 nobody else. So it's either their local agent or  
2 online business. We don't believe that it's in  
3 people's best interest to only have an online option  
4 for buying insurance. The last thing we want to do  
5 with any rules is to cause people to walk out and to  
6 seek service elsewhere.

7 MS. TAYLOR: Thank you. So I'm looking  
8 through the comments and it looks like the next one is  
9 regarding the documentation obligation. And there's a  
10 comment I think also about the formatting of the  
11 consumer signed statement. It seems like it is the  
12 same comment you had before with is substantially  
13 similar in form and content.

14 MR. SANDERS: That's correct. Our  
15 comment on Items 2 and 3 for Appendix B and C are  
16 similar to our previous one. We believe companies  
17 should have some reasonable flexibility in formatting  
18 different forms.

19 MS. TAYLOR: Okay. And then let's see  
20 in the same section regarding consumer signed  
21 statements it looks like there's some comment on maybe  
22 them providing this data or not.

23 MR. SANDERS: We had added in a  
24 previous comment a new item 4 if that's what you are

1 referring to.

2 MS. TAYLOR: Yes, it is.

3 MR. SANDERS: I'll speak to that. We  
4 don.t believe that insurance producers should be  
5 required to keep consumer and financial data for  
6 people how are not customers. It's one thing to keep  
7 it for someone that is a customer and we have a  
8 contractual obligation but it's another thing if we  
9 don.t. It's a liability for the insurance producer to  
10 maintain financial data for a customer with whom they  
11 have no relationship or no contract with. We don't  
12 believe the consumers would like this as well if they  
13 knew that simply filling out an application means that  
14 that agent is going to keep their personal and  
15 financial information without any contractual  
16 obligations.

17 MS. TAYLOR: Okay. Understood. Thank  
18 you. So we're going to move on, a couple of pages  
19 over to the supervision system. It looks like there  
20 is a comment regarding -- okay, so currently the rules  
21 state, the proposed rules require the insurer to  
22 maintain and establish procedures to identify  
23 suspicious consumer refusals to provide profile  
24 information. And I believe that's where you comment



1 is.

2 MR. SANDERS: Yes, ma'am. We have a  
3 comment on item 7 and on item 9 below that. On item 7  
4 our concern with this is that many consumers  
5 especially those taking out smaller annuities have a  
6 reasonable sense of privacy. And they don't believe  
7 that they need to provide their agent significant  
8 financial information if they are taking out, for  
9 example, \$5000 annuity. Item 7 suggests that any  
10 consumer that doesn't provide private data should be  
11 viewed suspiciously. We think that is not very  
12 consumer friendly.

13 That being said it's our understanding  
14 from talking to our friends at ACLI that this is  
15 actually intended to target producers who suspiciously  
16 don't try to receive financial data. Our suggestion  
17 is this should likely be drafted in a way that is  
18 specific to the intent.

19 MS. TAYLOR: Okay. Understood. And  
20 then a comment right below. So in the context of  
21 establishing those procedures it requires the rule --  
22 the proposal now requires the insurer to provide a  
23 written report to senior management for audit  
24 functions. So I think there's a comment on that.

1                   MR. SANDERS: That's correct. Number 9  
2 is already in the rule, the current rule. The new  
3 addition is that the report to senior management be  
4 written. We don't see any tangible benefit to this.  
5 As a company we already have to report all of these  
6 compliance items to senior management. Now today we  
7 could do that in a power point presentation, an email,  
8 a verbal conversation, or presentation, or any number  
9 of ways. But we still have to report to senior  
10 management. Including the word written means that we  
11 have to put all of that down into a report that's  
12 likely going to be very voluminous. If our senior  
13 management is already receiving this report, receiving  
14 it in writing doesn't help anybody. It does, however,  
15 create a notable amount of work for us. And this is  
16 an item I believe it is hard to see unless you are in  
17 a company.

18                   I've talked to David Bell, who is here  
19 today, our COO for our life insurance company. We  
20 agree that at minimum it would take an employee a week  
21 of full-time work to provide this written report. Now  
22 that's a written report that has no tangible benefit  
23 to consumers or to the department. It is just extra  
24 work because the word written was put in there.

1                   And I overlooked, I do have a comment  
2 on Item 8 as well. I apologize.

3                   MS. TAYLOR: Yes, okay. Let me just go  
4 back and make sure we understand where that is. That  
5 is regarding the procedures set up by the insured to  
6 identify sales contest.

7                   MR. SANDERS: Yes, ma'am, that's  
8 correct. The intent of this as we hear from our  
9 industry partners is to eliminate incentives that are  
10 strictly and solely based on the sale of a specific  
11 type of annuity in a specific time period. We  
12 understand and we have no problem with that. The way  
13 it is written it could be interpreted that the sale of  
14 annuities cannot be included in any incentive  
15 whatsoever. Our original comment would be to add the  
16 language that those type of incentives are not allowed  
17 if they would incentivize recommendations that are not  
18 suitable for the consumer. In further discussions  
19 with our friends at ACLI and the department we believe  
20 that this could possibly be flushed out with a  
21 department bulletin without adjusting the model  
22 language.

23                   MS. TAYLOR: Okay. Thank you. Going  
24 now I believe all the way to the end, so it's going to

1 be the last rule .09 regarding record keeping and it  
2 looks like this is requiring insurers and producers to  
3 keep certain records and make them available to the  
4 commissioner. Is there a comment on that one?

5 MR. SANDERS: I am -- yes, in .09. We  
6 also -- I'll speak to this and then I have another --  
7 one last comment on insurance producer training that  
8 if we can go back to that in a moment. I'll speak to  
9 .09 on record keeping.

10 MS. TAYLOR: Okay. Thank you.

11 MR. SANDERS: Our suggested language  
12 was to strike the new addition which says including  
13 summaries of oral disclosures. All the disclosures  
14 that are required by the rule today have to be made in  
15 writing. There are no disclosures required that are  
16 not in writing. And we are okay with that. The  
17 problem with this new language including the term oral  
18 disclosures is that it is not defined, which it's not,  
19 when an auditor comes in to look at the company they  
20 could very well read that to say essentially so what  
21 is everything that you told to the consumer because we  
22 could categorize that as an oral disclosure. What we  
23 want to avoid is our insurance producers finishing  
24 servicing a consumer on an annuity and then they have

1 to go type up an entire transcript because it is not  
2 unreasonable to think somebody would say everything  
3 you told to them is an oral disclosure and we need a  
4 record of that.

5 MS. TAYLOR: Okay. Understood. And  
6 we're going to go back now to I believe the -- I'm  
7 trying to find -- okay, so insurance producer  
8 training, it's under .07.

9 MR. SANDERS: Yes, ma'am .07 part (f)  
10 the timeframe.

11 MS. TAYLOR: Okay.

12 MR. SANDERS: The timeframe listed says  
13 that producer training for this shall take place  
14 within six months after this, after the enactment of  
15 this rule. Our insurance producers are currently on a  
16 24-month continuing education and relicensing cycle.  
17 While it doesn't seem to us in this room or in  
18 companies to say an additional five hours of training,  
19 that's not a big deal, it's easy to say that. For  
20 agents that half a day out of the office and it's  
21 burdensome when it is out of sync with their normal  
22 CE. That being said we understand the rationale and  
23 the timeframe and we're sensitive to that in  
24 consideration to the national discussion going on.

1 But we want to point out that that is burdensome and  
2 inconvenient for our insurance producers.

3 MS. TAYLOR: Okay. Thank you.

4 MR. SANDERS: Along the same lines if I  
5 may.

6 MS. TAYLOR: Yes.

7 MS. SANDERS: You had mentioned earlier  
8 an effective date of these rules et al. And I didn't  
9 see in the rules what an official effective date would  
10 be but is that what you are referring to six months  
11 after passage?

12 MS. TAYLOR: Yes. So, yes, right.

13 MR. SANDERS: May I speak to that even  
14 though there's not a spot on here per se for that.

15 MS. TAYLOR: Yes.

16 MR. SANDERS: It would be easy to read  
17 these rules and think that compliance is going to be  
18 easy, it's a few new forms that the agent puts into  
19 their desk. We have 500 agents, 200 offices in all 95  
20 counties. We're the number one writer of life  
21 insurance in Tennessee. Making changes of simple  
22 forms is a long process for us because it runs through  
23 our entire IT programming system at our home office  
24 and then it's distributed in a uniform way to all of

1 our agents. My point with that is our life company  
2 and our IT department are working on 2024 initiatives.  
3 2023 is done. Obviously we could comply with these  
4 within six months.

5 Also in consultation with Mr. Bell we  
6 tried to figure out if these go into effect and it  
7 requires six months how long will that take us and  
8 what's the resources required for earlier for  
9 compliance within six months. We figure it would take  
10 a cross discipline team likely a solid month of  
11 full-time work for an entire team because they would  
12 have to go back and strike the work they've already  
13 done for this year and for next year and redo all the  
14 new work, test it, and set up all the appropriate  
15 security protocols and everything entailed in it.

16 I'm not sure with respect to national  
17 conversation, I'm not sure what kind of flexibility  
18 there is in that. But we wanted the department to  
19 know that compliance at an earlier date is doable but  
20 it is significantly burdensome and it means that some  
21 of the other initiatives that we're currently doing  
22 will be undone. The things that we're already doing  
23 to help our agents and to help our consumers, they'll  
24 get put to the side so that we can expedite

1 compliance.

2 MS. TAYLOR: Understood. Thank you.

3 I think that summarizes everything from  
4 Farm Bureau; is that right, MR. Sanders?

5 MR. SANDERS: Yes, ma'am.

6 MS. TAYLOR: I appreciate it.

7 And we'll probably be in touch.

8 MR. SANDERS: Thank you.

9 MS. TAYLOR: So do we have any other  
10 comments from the audience.

11 Hello, just identify yourself please.

12 MS. LATTA: I am Laura Leigh Latta with  
13 the American Council of Life Insurers. Thank you for  
14 allowing me to comment today.

15 I would just really like to give some  
16 general context on this rule and how we got here today  
17 and to reiterate ACLI's support on support for this  
18 rule.

19 In February of 2020 NAIC adopted  
20 revisions to the sustainability in annuity  
21 transactions model regulations. The goal of these  
22 revisions at that time was to be responsive to the  
23 widespread criticisms and concerns regarding annuity  
24 sales practices in the market today. The revised



1 model regulation critically incorporate the best  
2 interest standard of care and represents one of the  
3 most important consumer protection initiatives of the  
4 last several decades.

5           The model regulation was developed over  
6 the course of several years with the input of dozens  
7 and dozens of stakeholders including federal, state  
8 legislature, state regulatory, consumer, and industry  
9 interested parties all working together and the  
10 results of their efforts were nothing short of a  
11 triumph of coordination among those parties.

12           The final rule imposes a robust  
13 standard of care to protect consumers while at the  
14 same time remaining contemplative and considerate of  
15 industry practices and the way that annuity sales have  
16 traditionally been done in our industry.

17           It also accords importantly with  
18 regulation best interest which was produced in  
19 conjunction with the model regulation by the SEC and  
20 is applicable, of course, to securities. These work  
21 steams were developed along a dual track and are  
22 intended to work in lockstep with one another without  
23 deviation.

24           As of yesterday with Colorado joining

1 the mix we have 28 states that have adopted the model  
2 rule without deviation or any kind of qualification.  
3 In two short years this model is well on its way to  
4 becoming a national standard and I think is a  
5 testament to the efficacy of the state based  
6 regulatory system.

7           ACLI is very, very thankful to the  
8 Tennessee Department in particular for their work at  
9 NAIC not only to see this rule pass there but to  
10 introduce it here in Tennessee now.

11           Apart from minor technical changes  
12 which will be received from ACLI later this week we  
13 don't have substantive comments.

14           We support the rule as written, the  
15 robust standard contained therein, and we support the  
16 furtherance of this important national initiative.

17           That being said as Ben alluded to and I  
18 think is very important to consider we are sensitive  
19 to the concerns of stakeholders with unique interests  
20 in Tennessee. And if it's helpful to the department,  
21 ACLI is happy to continue discussions as to how this  
22 model language can be clarified to better suit state  
23 specific needs.

24           I think there are some concerns that

1 were raised by Farm Bureau particularly around  
2 compensation disclosures where maybe a bulletin could  
3 address some of these concerns. And I know they are  
4 drafting some things like the sales contest provisions  
5 which might be incorporated into a bulletin and could  
6 resolve those issues.

7 So we are happy to do any work that's  
8 helpful to the department having these discussions and  
9 doing further work on clarifying the rule.

10 Thank you.

11 MR. BENSON: My name is Matt Benson.  
12 I'm an insurance producer and securities licensee as  
13 well as a certified financial planner. And I'm  
14 speaking on behalf of NAFA of Tennessee and NAFA. So  
15 thanks for the opportunity to talk about this.

16 First like to thank the department for  
17 proposing revisions to the rules regarding suitability  
18 in annuity transactions. The revisions would put in  
19 place a best interest standard conduct in connection  
20 with annuity recommendations and sales and align with  
21 the NAIC model regulation.

22 NAFA, just a little bit about NAFA.  
23 We've been found in 1890, represent the interest of  
24 20,000 licensed insurance agents and financial

1 advisers across the country and 435 members in the  
2 State of Tennessee. 90 percent of our members do  
3 serve middle income and lower income clients and with  
4 a strong percentage that do sell annuities. They are  
5 complex products. They do provide many times not  
6 every annuity product but they provide lifetime  
7 guarantees and they do entail a lot of design options  
8 in there that can be fairly complex all based upon  
9 what the consumer needs and do merit a best interest  
10 of consumer standard of care.

11 So NAFA Tennessee and NAFA does believe  
12 that a best interest standard strikes the appropriate  
13 balance between protecting consumers, promoting market  
14 competitions, and avoiding too much over regulation.

15 We think the best interest standard  
16 there is easily understood in plain English and  
17 obligation and responsibilities to satisfy this  
18 requirement are clearly defined.

19 We think it does protect the customer's  
20 choices, choices in different competitive products and  
21 trustworthy options for retirement planning. So like  
22 myself I offer insurance with multiple companies,  
23 annuities with multiple different carriers, and all  
24 different types of products from variable annuities

1 with lifetime guarantees, some they are just using for  
2 investment only, fixed annuities, something the other  
3 gentleman before that are just straight plain CD like  
4 annuities to annuities that pay an income stream for  
5 life. So there's -- you might just think well an  
6 annuity seems straight forward but there's a wide  
7 array of different uses, types, and where it is  
8 currently is that there is a different standard for  
9 variable annuities and a much lesser, lower standard  
10 for fixed annuities and indexed annuities.

11 Best interest standard is going to says  
12 I'm going to put my client's interest in front of my  
13 own, I'm going to meet the obligation. I've been  
14 doing that for 22 years already. When somebody asks  
15 me, you know, what's your philosophy and I just say  
16 its very simple, golden rule. What would I want to  
17 have if I was in your shoes. And I think the best  
18 interest standard kind of just maintains that and push  
19 that up. And we are already there for most producers  
20 are already acting in that way as comments have  
21 already been provided that to think of a profession  
22 more noble in a more noble fashion that insurance  
23 producers are already doing this. So it's not such a  
24 deviation.

1                   We think it does provide, the NAIC  
2 model language promotes uniformity and transparency.  
3 Community would know what to expect when deciding when  
4 a consumer is presented with annuity and would kind of  
5 know that there's a standard that exists there. I  
6 think that is important because we are seeking to  
7 instill trust to that consumer when they are buying an  
8 annuity contract.

9                   My business like most, it's a  
10 relationship business, it's not transactions. So when  
11 I let somebody know that I want them to sign a  
12 disclosure letting them know I'm acting in their best  
13 interest it's received warmly because I'm doing  
14 business in other states. When they hear that it  
15 resonates with them.

16                   28 states have already adopted this with  
17 Colorado just was it yesterday or two days ago. So I  
18 think this is going to be warmly received by  
19 consumers.

20                   So and NAFA itself we subscribe to a  
21 code of ethics that requires that we put our clients'  
22 interests first and so we support in essence  
23 establishing a consistent workable best interest  
24 standard for financial professionals, applaud the

1 Tennessee Department of Commerce and Insurance for  
2 drafting these proposed revisions as in line with the  
3 NAIC model language to provide a clear enhanced  
4 standard of care for annuity recommendations which is  
5 vital to support consumer confidence and guarantee  
6 them good products.

7 Thanks for allowing me to speak.

8 MS. TAYLOR: Thank you very much.

9 Any other comments?

10 Don't be shy.

11 I'm going to -- I want to let everybody  
12 know that we are going to keep the record open for a  
13 week. So I calculate that as close of business next  
14 Thursday. So if you would submit those to me which  
15 most of you probably have my information from the  
16 publication but it's jenny.taylor@ten.gov. If you  
17 lose that and you have things, submit it, we will get  
18 it. We will make sure that all these comments are  
19 included on the next form that would be filed which  
20 will be the rulemaking hearing form and the  
21 department's response will be included in there for  
22 each comment.

23 Bear with me on that, this will take a  
24 little bit of time. We'll have to get the transcript

1 back. So that filing will be coming.

2 And I'm trying to see if there's  
3 anything else. After that I think most people know  
4 the process it will still have to be reviewed by the  
5 AG's office. It will be in front of the legislative  
6 committee for verbal so we'll have to go through that  
7 process as well.

8 If there's -- is there anything else we  
9 have?

10 So I think unless anybody has any  
11 further comments, we've done everything we're going to  
12 do at the hearing today. And again just reach out  
13 with your comments within the next week and we will  
14 take those into consideration, make it part of the  
15 record.

16 And I really appreciate everybody  
17 attending today. Thank you.

18 (Whereupon, at 10:52 a.m., the  
19 proceeding was concluded.)


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CERTIFICATE OF DEPOSITION OFFICER

I, KATHERINE WYANT, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



KATHERINE WYANT  
Certified Reporter in and for the  
State of Tennessee

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CERTIFICATE OF TRANSCRIBER

I, CHERYL LaSELLE, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHERYL LaSELLE

[& - annuities]

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[reiterate - section]

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[securities - suitability]

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[suitable - transparency]

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[tricky - yesterday]

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