LIMRA Regulatory Review

ADVANTAGE IN A REGULATORY WORLD

Broker-Dealer
Investment Adviser
Insurance
Research

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This complimentary newsletter addresses current regulatory concerns around the world and provides broker-dealers, investment advisers, and insurance companies with tips and suggestions for meeting regulatory obligations.

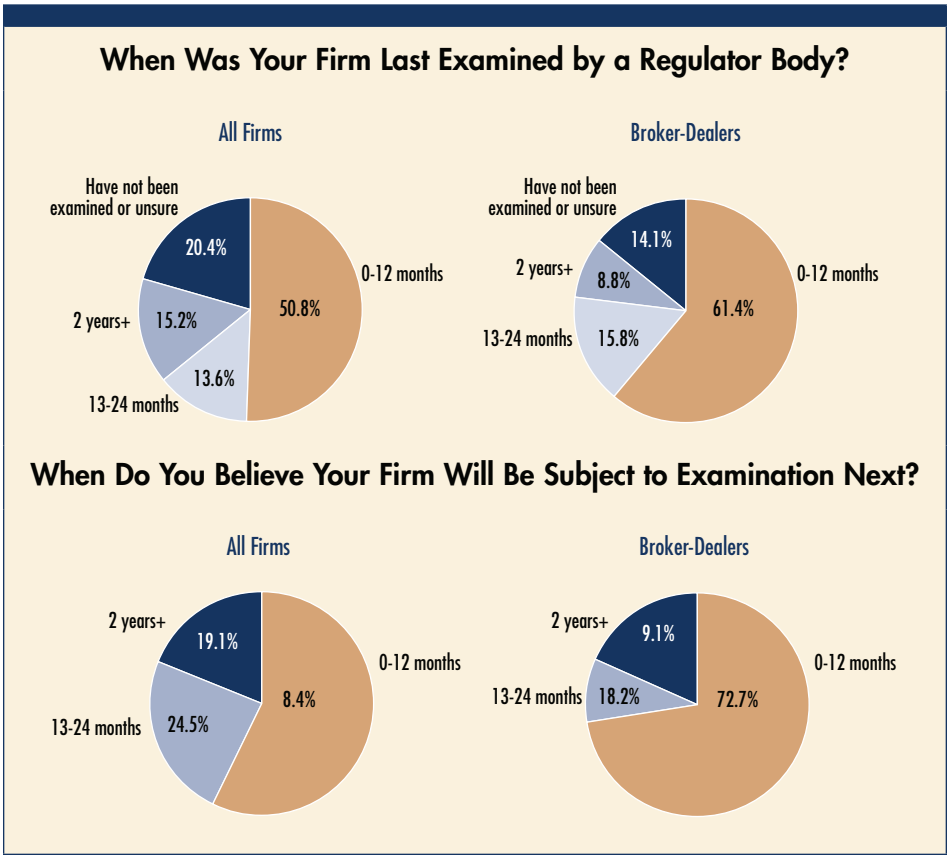
LIMRA

United States

Examination Trends and Electronic Communications Compliance

It's no secret that FINRA and the SEC have stepped up their enforcement efforts in the past year. Traditionally, financial services is one of the most heavily regulated industries; and, in the wake of the 2008–2009 global economic meltdown the government has increased its oversight of financial firms with new guidelines and stricter enforcement of existing regulations.

The SEC filed 681 cases in 2010. In addition, FINRA performed 2,151 examinations and filed 1,310 new disciplinary actions in 2010.



LIMRA SPOTLIGHT

SEMINAR

➤ Social Media Conference for Financial Services
August 24–26, 2011
Cambridge, MA
Help your company take its social media efforts to the next level while meeting regulatory requirements. Presentations and panel discussions by industry leaders and social media experts — plus special breakout sessions — will optimize your learning experience. To learn more and register, please visit us online. http://www.limra.com/Events/eventdetail.aspx?id=1074

NOTABLE

➤ Help Producers Leverage Social Media and Stay in Compliance
LIMRA and Socialware have teamed to create **Insights: Advisor Series,** an always-current curriculum that helps producers grow sales — and protects your firm. Courses already available include *Social Media 101, Compliance Basics, LinkedIn, Twitter,* and *Facebook*. For more information, please contact Meggan Tufveson at 860-285-7859 or usclientservices@limra.com.

➤ Cost-Effectively Meet the NAIC's Suitability in Annuity Transactions Model Regulation
LIMRA's new **AnnuityXT** training program and **Compliance Suitability Survey** can help you to: (1) ensure that producers complete basic suitability and product-specific annuity training before recommending an annuity product; (2) monitor sales; and (3) share findings with distribution partners. For more information or to see a demo of the new AnnuityXT training system, please contact Meggan Tufveson at 860-285-7859 or usclientservices@limra.com.

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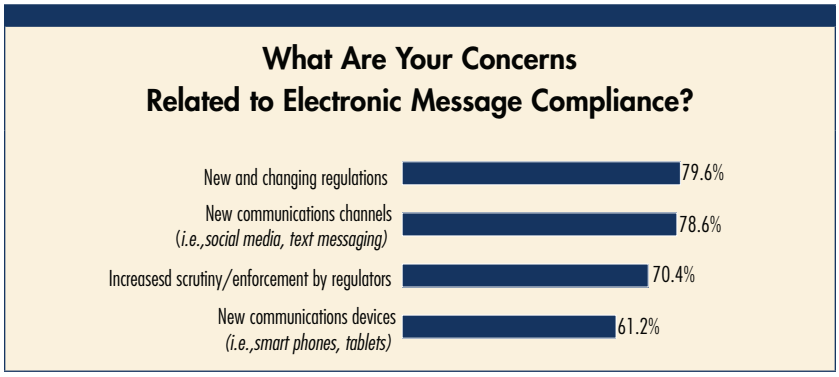
What does that mean for registered firms? To better understand this compliance impact, Smarsh recently conducted a survey of compliance professionals within financial services. The results show that examinations are increasing not only in frequency, but also in complexity, due to a broader array of electronic communication channels. Electronic message compliance is a growing burden for financial services organizations, and evidence suggests that firms have much more to do to be fully confident in their compliance.

Regulatory Examinations Are Increasing

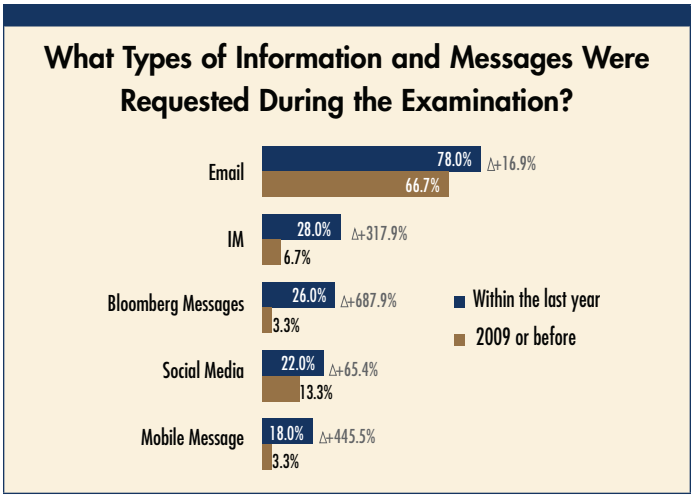
"Increased scrutiny/enforcement by regulators" was a top-three concern related to electronic message compliance, selected by 70.4 percent of respondents. Among SEC-registered firms, that rate was 75.7 percent. Additional findings demonstrate that these concerns are well-founded, as a large number of firms were recently examined by a regulatory body. More than half (50.8 percent) were examined in the past year and 58.4 percent expect to be examined in the next 12 months. Among broker-dealer respondents, those numbers are even higher — 61.4 percent and 72.7 percent, respectively.

In addition, 73 percent of all respondents and 78.3 percent of broker-dealer respondents have to produce electronic message data for regulatory audits or e-discovery events at least once a year, demonstrating the need to produce data outside of an examination for litigation, e-discovery, customer matters/complaints, or internal audits.



Greater Complexity and Scope of Requests

In addition to more frequent examinations, SEC and FINRA examiners are requesting a deluge of information from firms. Emails were requested in 78 percent of examinations in the last year, and messages from other electronic communications channels are also being requested. Twenty-two percent of respondents who were audited in the last year received requests for social media data — up 65.4 percent from those audited before 2010. Requests for mobile messages increased 445.5 percent in the same time period; Bloomberg messages increased 687.9 percent; and instant messages 317.9 percent.



It is clear that financial firms should expect a significant rise in social media data requests in 2011 and beyond. In December, 2010, *IAWeek* reported that an SEC sweep letter was sent to registered investment advisers requesting documents related to firms' use of social media. In February 2011, FINRA's annual Regulatory and Examination Priorities letter to member firms stated: "In 2011, firms can expect FINRA examiners to review supervisory systems and recordkeeping for electronic communications like social media" (see http://www.finra.org/Industry/Regulation/Guidance/P122861).

Auditors are not just requesting the electronic message data itself. Survey respondents who were audited in the last six months indicated additional requests for related information, including written supervisory procedures (78.1 percent), business continuity plans (71.9 percent), company website pages (56.3 percent), supervision activity reports (56.3 percent), and archiving vendor contracts (25 percent).

More Challenges for Financial Firms of all Sizes

The survey results show that no matter which regulatory body governs a firm, electronic communications compliance is universally perceived as a growing burden. Compliance professionals believe that regulators will continue to scrutinize the financial services industry, and that they will shoulder more responsibility in the future.

These examination trends impact the time and resources compliance professionals are dedicating to electronic messaging compliance. When asked if the amount of time spent on electronic message compliance changed over the previous 12 months, 95.8 percent said it increased or stayed the same. When asked if the amount of resources (including expenditure) had changed, 99.0 percent said it increased or stayed the same, with nearly 70 percent describing an increase in resources required to meet regulatory requirements. Only 1 percent described a decrease in the amount of resources their firm committed to electronic message compliance.

This growing burden is impacting compliance professionals' expectations for the future. Ninety-eight percent of respondents expect their electronic message compliance resource requirements to increase or remain the same in the coming year.

Conclusion

Smarsh's 2011 Electronic Communications Compliance Survey shows that regulatory scrutiny is only increasing, and managing electronic recordkeeping compliance is more challenging and complicated than ever before.

FINRA alone performed 2,151 examinations and filed 1,310 new disciplinary actions in 2010 — an increase of 13 percent from the prior year. The costs of noncompliance extend well beyond the fines that regulators may impose, and include reputational harm, lost business opportunities, decreased assets under management, or damaged investor trust.

Increasingly, compliance departments need to be more efficient and effective in their electronic recordkeeping, supervision, and data protection practices. Regulators are putting emphasis on transparency and accountability, and lawsuits stemming from alleged misconduct continue to splash across the front pages of *The New York Times* and *The Wall Street Journal*.

Organizations must be prepared to dedicate significantly more resources to compliance, and look for ways to be not only more efficient, but also more effective.

By Ken Anderson, Senior Communications Director, Smarsh, Inc. Please contact Ken at kanderson@smarsh.com if you have any questions about this article. The full survey can be downloaded at www.smarsh.com/compliancesurvey.

e-Fulfillment — Improving Compliance via e-Delivery

Insurance companies continue to search for ways to reduce costs without sacrificing security, and ideally without an adverse impact on customer satisfaction and retention. One such opportunity is to deliver records via e-delivery rather than via the U.S. Postal Service. As with an electronic signature process to sign various documents (such as the applications for insurance or other forms), a reasonably well-designed e-delivery process can reduce costs and also reduce compliance and litigation risk.

For those customers that elect e-delivery as the only delivery method for designated categories of records, insurance companies will have a detailed and accurate record of what was delivered, to whom, and when. This evidence can then help companies prove that certain mandated disclosures or notices (such as privacy notices, replacement notices, adverse underwriting notices, and a host of other records) were in fact delivered. Such evidence can also help companies establish what, to whom, and when documents were delivered, if those documents are at issue in a dispute, such as a consumer claiming to never have received such information.

It is possible for an e-delivery process to generate a positive return on the investment in time and resources to design and implement such a process, even if only a fraction of customers elect to receive records solely though e-delivery. Further, a company might still realize a positive ROI even if the company elects to continue sending certain notices (such as final lapse notices) via the U.S. Postal Service in addition to, or in lieu of, e-delivery.

What follows are four important elements to consider when designing and implementing an e-delivery process.

Obtain the Consumer's Consent — Under the Federal ESIGN law and in the various states that have enacted the Uniform Electronic Transaction Act (UETA), consumer consent is required for exclusive e-delivery. A company even may provide disclosures required by the insurance codes to be in writing exclusively via e-delivery.

For consumer disclosures required to be given in writing that are governed by the Federal ESIGN Law, and in 17 of the states that have enacted UETA, a special step may be required in obtaining the consumer's consent to e-delivery: consumers must not only consent, but also reasonably demonstrate their ability to receive and open electronic records in the format in which the disclosures will be sent. Companies need to obtain the necessary consent as required by the Federal ESIGN or the applicable state's enactment of UETA.

It is important for companies to consider how they will collect and retain evidence of obtaining the consumer's consent. The evidence collected, secured, and retained should include the steps taken to confirm the actual identity of the person giving the consent. Reasonably authenticating the identity of the person consenting can be done a variety of ways, including asking for information that only the person in question would know, such as a password given to the person as part of the application process. The evidence collected should also include a record of the terms of the consent presented and accepted by the consumer. Recognizing that the terms of the consent may change over the years, the company may need to offer into evidence the actual terms of the consent a given consumer accepted. This evidence should be retained in an audit log, capable of being retrieved later if needed, to show what the consumer actually accepted.

Seek a Broad Consumer Consent — When seeking consumer consent, consider drafting the form of consent to e-delivery as broadly as possible to also include records that might not yet be ready for electronic delivery. The consent can explain that some records may still be delivered via the U.S. Postal Service. Obtaining broad consent initially can eliminate the burden of asking consumers for consent each time the company broadens the types of documents it delivers electronically. A broad consent should also clearly inform the consumer of the need to keep the company apprised of the consumer's mailing address for materials to be sent via the U.S. Postal Service, so notice sent in that fashion will not bounce back.

No-Shows — The best practice for e-delivery is to send an email to consumers with a link to the company's secure website, where the consumer can log in to retrieve the documents. The company should maintain a record of whether and when consumers access the records in this fashion. The company will also need to address the scenario (for various categories of documents) of a consumer not logging in to the secure site to retrieve records delivered in this fashion.

A properly drafted consent can address this scenario, at least in part. For example, the consent could state that by consenting to e-delivery, the consumer agrees that delivery is deemed to have been completed upon receipt of an email alerting the consumer that important information is available to review on the secure site. This, of course, should be explained clearly, and each email to the consumer with such a link should remind the consumer of the significance of the email. Other alternatives include sending reminders and ultimately sending the records in question via the U.S. Postal Service.

Bounce-Backs — Companies should also include in their e-delivery process how to handle undeliverable emails alerting the consumer that records are available. Bounce-backs may occur for a variety of reasons. As with the no-show problem above, options for dealing with bounce-backs include sending reminders directly (perhaps a short notice via the U.S. Postal Service), or via the writing producer, and ultimately sending the materials via the U.S. Postal Service. For some records to be delivered, time may be of the essence, requiring a shorter cycle for reminders and ultimately sending the records hardcopy.

E-delivery has the potential to save insurance companies significant amounts, without any adverse impact on customer satisfaction. Implementing a reasonably well-designed e-delivery process can reduce compliance and litigation risk, relative to the traditional process of delivering hardcopies in person or via the U.S. Postal Service. The risk is reduced because there can be reasonable *documentary* proof as to what, to whom, and when certain materials were delivered to the consumer, instead of relying solely on *oral testimony* that depends solely on memory.

By Patrick Hatfield, Partner, Locke Lord Bissell & Liddell LLP

SEC Proposes to Update Performance Fee Rule; Advisers May Need to Register Additional IARs

On May 10, 2011, the SEC announced that it intends to issue an order raising the dollar amounts of the "net worth test" and the "assets-under-management test" contained in Rule 205-3 (the "Performance Fee Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). The Performance Fee Rule sets forth the conditions under which a registered investment adviser may charge a performance-based fee to so-called "qualified clients." This proposal responds to directives contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") that the SEC is required to take action on by July 21, 2011. The proposal would make certain other changes required by Dodd-Frank and seeks to coordinate aspects of the Performance Fee Rule with other changes in Dodd-Frank. It is worthy of note that the SEC's release does not mention that the proposed changes to the definition of "qualified client" will also expand the scope of persons that must register as investment adviser representatives under state law.

Revised Qualified Client Thresholds

Section 418 of Dodd-Frank requires that the SEC issue an order increasing the dollar amounts of the assets under management and net worth thresholds for "qualified clients" in order to reflect the effects of inflation since 1998, the last time that the SEC revised these dollar amounts. Under the proposed new thresholds, a client must have at least $1 million in assets under management with the adviser (increased from $750,000) or at least $2 million in net worth (increased from $1.5 million) in order to be a "qualified client." Under the proposed rules the new thresholds will be effective 30 days after the SEC's order, but the SEC is requesting comment on whether a longer transition period is appropriate.

Inflation Indexing of Qualified Client Thresholds

The proposal indicates that the SEC arrived at the new inflation-adjusted threshold figures by analyzing the historic and current levels of the Personal Consumption Expenditures Chain-Type Price Index ("PCE Index"). The SEC chose to index the thresholds against the PCE Index because it reflects inflation in the personal sector of the U.S. economy, and the SEC has made reference to the PCE Index in other rulemaking contexts. Dodd-Frank sets a five-year cycle for adjustments to the thresholds, with the first update occurring in 2016; and the SEC intends to delegate this future updating to its staff. The SEC intends to apply the PCE Index to future updates, and use the dollar-amount tests adopted in 1998 as a baseline for all future adjustments. In future updates, the amounts will be rounded to the nearest multiple of $100,000.

Treatment of Primary Residence for Net Worth Calculation

The SEC also proposes to exclude the value of a person's primary residence as well as any debt secured by the property in calculating a person's net worth for purposes of determining who is a "qualified client." This revision is not mandated by Dodd-Frank. Instead, the SEC is attempting to conform the method of calculating net worth for the "qualified client" test to the new method for calculating net worth in the "accredited investor" standard under the Securities Act of 1933 (the "Securities Act").

The change to the net worth calculation in the "accredited investor" standard was imposed by Dodd-Frank. Similar to the calculation for the "accredited investor" standard, although the net positive value of a home is not included in the calculation of a person's net worth, any net negative value of the home including the mortgage would be subtracted from the person's net worth. As a result of this change, a mortgage on a person's residence would not be included in assessing net worth unless, at the time of the calculation, the outstanding debt on the mortgage exceeds the market value of the residence. Any amount in excess of the market value of the house would be considered a liability in calculating net worth under the proposed amendments to Rule 205-3.

Grandfathering Provisions

The SEC also proposed two transition provisions allowing an SEC-registered investment adviser and its clients or private fund investors to maintain existing performance fee arrangements that were permissible when the parties entered into the advisory contract, regardless of whether the performance fee would be permitted under the amended Rule. Under the first of these "grandfathering" provisions, an SEC-registered investment adviser that entered into a contract satisfying the conditions of the Performance Fee Rule that were in effect when the contract was executed, would be deemed to satisfy the conditions of the proposed amended Rule. If a new party is added to that contract at a later date, the conditions of the Rule that are in effect at the time the new person becomes a party would apply to that new person.

The second transition provision, which applies to investment advisers previously exempt from registration that subsequently register with the SEC, provides that the Section 205(a)(1) performance fee prohibition would not apply to the contractual arrangements an adviser entered into when it was exempt. However, the performance fee prohibition would apply to contractual arrangements entered into by the adviser after it either registers with the SEC or is no longer exempt from registration. For instance, if an adviser to a private fund that was exempt from adviser registration subsequently registers with the SEC, the Performance Fee Rule would not act to prohibit performance fees being charged to any pre-registration investors in the fund (including those that do not meet the "qualified client" test) or to any investments those same investors make in that fund following registration of the adviser. However, any investors who enter the fund after the adviser registers would be required to be "qualified clients" under the amended Rule in order for those investors to bear a performance fee.

Surprise! Advisers Have More IARs to Register

Although not mentioned in the SEC's release, the proposed changes to the definition of "qualified client" will have another impact on the business of some advisers. The changes will expand the scope of persons that must register as investment adviser representatives ("IARs") under state law.

Rule 203A-3, one of the rules implementing the National Securities Markets Improvement Act of 1996, defines the term IAR for the purpose of determining whether supervised persons of an SEC-registered investment adviser must register as IARs with the various states. That definition is based, in part, on calculating the number and percentage of natural person clients of a supervised person, and it excludes from the count of natural person clients anyone that is a "qualified client" under the Performance Fee Rule. Therefore, any supervised person of an SEC-registered investment adviser that currently relies upon one or more of their natural person clients being "qualified clients" in order to fall below the five in number or 10 percent threshold for natural person clients so that the supervised person may avoid IAR registration will need to review whether their natural person clients meet the new "qualified client" thresholds. The result may be that some supervised persons will need to newly register as IARs, and this may require them to pass qualifying examinations such as the Series 65. The time involved in conducting this analysis and registering additional IARs may form a basis to suggest that a 30-day effectiveness period for the changes in the "qualified client" thresholds may be insufficient.

Conclusion and Action Steps

The proposed updates to the Performance Fee Rule are not unexpected, as the dollar thresholds have not been changed since 1998. However, the SEC's new thresholds have the potential to disrupt investment advisers whose clients might not meet the new requirements. The SEC's grandfathering provisions, if enacted as proposed, will largely blunt the harm to these investment advisers, at least in relation to existing clients, while shrinking the pool of potential new clients who qualify under the new thresholds. Thus far, however, it appears that the SEC has not considered the impacts of these changes on supervised persons that will newly need to register as IARs. This may be a topic ripe for comments on the proposal. At a minimum, advisers should promptly undertake a review of existing natural person clients with this issue in mind.

For a complete description of the proposed changes by the SEC, please refer to the SEC's Release "Investment

Adviser Performance Compensation" SEC Release No. IA-3198; File No. S7-17-11 (the "Release"). The Release is available at http://www.sec.gov/rules/proposed/2011/ia-3198.pdf.

By Michael K. Renetzky and Nicholas Georgiton. Michael K. Renetzky (mrenetzky@lockelord.com) is a partner at Locke Lord Bissell & Liddell LLP and is a member of its Executive Committee. Mr. Renetzky chairs the firm's Investment Adviser and Fund Management Practice. Nicholas Georgiton (ngeorgiton@lockelord.com) is an associate at Locke Lord Bissell & Liddell LLP.

Exploring the Confusion About State-Approved Annuity Suitability Training

Twelve states have passed or have pending regulations adopting the 2010 version of the *Suitability in Annuity Transactions Model Regulation*. Twenty-nine more states indicate that they will adopt it this year or no later than 2012 as required by the Harkin amendment in Dodd-Frank. This will bring the universe of states passing this to over 40; but, the clarity and understanding of exactly what training is required of producers among the states is less than clear. The model act adopted in 2010 by the NAIC had the noble intent of allowing carriers to accept any approved CE course taken by a producer in one state as evidence they had met the requirement for another state provided the course was from an "approved CE vendor" and was "substantially similar" to the course required in the state where the annuity was sold. A few states such as Florida, California, and Texas have made their producers meet a higher standard either through a longer course or by making this an ongoing requirement; or, as these states and others have done, by adding specific content requirements to be covered in the approved course. This is nothing new; all states have had the ability to determine their own CE requirments or to increase what is required.

What *is* new however is that the model act clearly intended in its 2010 version that this CE portion of the training requirement should be a "once and done" for producers. It also added the new wrinkle that annuity carriers must "verify" — before issuing the annuity contract — that the producer completed the CE portion before making an annuity recommendation to a consumer. The good news was that the model permitted carriers to accept evidence, such as a certificate showing that the producer had completed a course in one jurisdiction, as evidence he or she had met the carriers' training requirement for any other state, provided those states had similar course requirements. What does "similar" mean? Most states have adopted the Model in its original form; however, in addition to California and Texas, Florida also has a state-specific suitability training requirement that deviates substantially from the NAIC model act. In a memorandum issued on September 25, 2008, Florida issued a content outline that course providers must follow in the development of their programs to meet their 3-hour training requirement. The State of Wisconsin has introduced a slightly different twist on the NAIC list of six required topics outlined in the model act — the six required topics include:

1. The types of annuities and various classifications of annuities;
2. Identification of the parties to an annuity;
3. How fixed, variable and indexed annuity contract provisions affect consumers;
4. The application of income taxation of qualified and non-qualified annuities;
5. The primary uses of annuities; and
6. Appropriate sales practices, replacement and disclosure requirements.

An "expanded" topical outline was developed by Wisconsin that essentially follows the format of the NAIC listing — but with far more "meat." With the addition

of an expanded list of required topics, course providers have been forced to develop unique CE courses to meet the Wisconsin standard. Rhode Island has also adopted a standard comparable to Wisconsin's for the approval of annuity suitability courses. So, to the extent that a course is approved in one of those states with similar requirements, it should be acceptable in another state with those same requirements or content, for the purpose of allowing producers to recommend annuities to residents of both states *and* be acceptable to the issuers of those annuities as evidence the producer met the training requirement.

Jim Mumford, First Deputy Commissioner for Iowa, has a reassuring perspective on this; he was on the NAIC committee that drafted this regulation, and Iowa was among the first states to adopt the newest model. Iowa Administrative Rule 191-15.72 became effective on January 1, 2011. "It was never our intent to require producers to take 50+ separate but identical CE courses covering the same content, or even a separate CE course for every state in which they solicit annuity business. The basic regulation viewed this as needed training for all producers and, once completed, it was our view that for most states they were done, they have met the requirement."

All producers must meet the periodic CE training requirements of their resident state in order to maintain their licenses to solicit, and that has not changed with the model regulation. Many states accept producers' credits in their resident state toward meeting the requirements of non-resident producers in their state. Producer CE requirements do vary from state to state, but in general producers must complete a set number of CE credits or hours over a number of years, but prior to time of license renewal. Most states also have a process for approving the course content and vendor providers that deliver CE training; and 17 states use centralized services to track producer CE credits and course completions such as SBSs (State-Based Systems). Many states charge producers a fee for registering their CE credits in each state and these are typically collected by the course vendor as part of the course offering.

Do Producers Really Need CE Credit?

Another, less-understood, wrinkle in the model act is that the producer need not actually obtain or purchase CE credit for the annuity CE portion required by the Suitability in Annuity Transactions Model Regulation. Producers are only required to take an "approved course" from an "approved vendor." Should they need or want CE credits, however, some producers will opt to pay the fee or submit the completion for CE credit toward their required CE minimums in a given state, but some will not. This can present challenges to annuity carriers (who are required to "verify" that producers have completed a course for annuity suitability as required under the Model Regulation). It can be especially challenging if the carrier relies on checking for CE credits in state records or on a state CE credit database like SBS. Only those credits submitted for CE credit by the producer will appear there. Producers who simply complete an approved vendor's CE course in annuity suitability — but who either did not need or did not purchase the added CE credits — will satisfy the Model Regulation requirement and be able to produce a certificate showing they completed the course; but these producers will not show up as having any CE credit for this specific course in a given state.

Bruce Saenger, president of Saenger Consulting Group, agrees that this can be a source for confusion as companies struggle to meet this new and fast-moving requirement. "We create and file courses for all kinds of continuing education requirements, and we help firms keep track of their training delivery programs to make sure producers and companies get appropriate credit for all the hard work they do. But this model regulation is a bit different in that it shifted not only the burden of what was required but also what would be acceptable, and who has to prove it." In most states, CE credits are tracked for producers toward completion of the state license validation for renewal. The producer must meet his or her resident state CE requirement in most cases to renew their license and to show to the carrier they have completed any unique product or market requirements such as LTCI, flood insurance, and annuities. This new model differs significantly in that it allows the carrier to accept as verification a certificate for a course taken for another state, if it meets the carrier's "training requirements," provided it is for a course that is substantially similar to the course required for the state where the annuity contract was written. This means that some annuity companies will need a new way to collect, verify, and store this training record, and this might be something they did not have to do before, and many may not have a system ready to perform this function.

"The normal model for CE reciprocity does not apply here," says Saenger, "in fact the model act seems to mandate a new model for reciprocity by saying that an approved course taken in one jurisdiction should be seen as acceptable in any other with a similar requirement, but only for the purpose of meeting the carrier's training requirement, not for any other purpose such as producer licensing CE credit."

It is understandable that producers are confused by this. The effective date of Oklahoma's Administrative Code 365:25-3-1 was July 14, 2010 and this state became one of the first to adopt a regulation that closely followed the NAIC's model act. Many producers took the OK course in order to sell annuities, but as other states came on board with the model, and producers tried to apply those CE credits in other states, they were told that the OK course "does not qualify for CE credit in their state." This may be perfectly true for CE purposes toward license renewal credits, but is not true for the purpose of meeting an annuity issuer's suitability training requirement under the model, since any annuity issuer is allowed, under the model regulation's language, to accept that OK course as evidence they met the carrier's annuity training requirements, and can therefore sell annuities in another state, provided it is for a state with substantially similar requirements to Oklahoma's. While confusing, this actually makes sense when taken in the context of the model act adopted by these states. For example, a non-resident producer doing business in Wisconsin is helped by the adopted language that is consistent with the model act (note that producers/agents are called "intermediaries" in WI) — as follows: An excerpt from WI Statute ***628.347. Suitability of annuity sales to consumers;***

> *8. Satisfaction of the training requirements of another state that are substantially similar to the requirements of this paragraph satisfies the training requirements of this paragraph in this state.*
>
> *9. An insurer shall verify that an insurance intermediary has completed the annuity training course required under this paragraph before allowing the intermediary to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subdivision by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.*

Therefore, a comparable course completed in another state such as Iowa or Oklahoma will meet the annuity suitability training requirement in Wisconsin (as provided by statute) but it will not be granted CE credit *unless* it has also been approved by Wisconsin for CE credit. Saenger has advised their clients to use courses based on the topics specifically addressed in the model act. Where possible, companies sought and received credit for the same course in multiple jurisdictions to facilitate CE credit reciprocity. This tactic works well for all states that followed the model act but did not "expand" or otherwise modify the training requirement such as is the case with Wisconsin, Florida, Rhode Island, Texas, and California.

Other Challenges

For those states that permit excess credits to be "carried-over" to the next reporting period (in whole or in part — including those states with an annuity suitability training requirement such as Colorado, Oklahoma, Rhode Island, and South Carolina) earning a few "extra" credits would not pose a problem or a financial hardship. They can pay the fee and use those credits toward meeting a future CE credit requirement. However, in those states that have passed the model regulation and require suitability training and do not permit excess credits to be carried over (such as Washington, DC, Iowa, Ohio, Oregon, and Wisconsin), the extra CE credits earned by a producer would be wasted. In some cases those CE credits are not even posted to a producer's CE credit record! This is a problem for any annuity carrier relying solely on checking a producer's CE record or database, since they will not see any credits for the annuity suitability course, even though the producer completed the course and has a certificate from an approved vendor, because the producer already had satisfied that state's CE requirement!

As new states adopt this model this confusion may increase. This trend of requiring product-specific training outside the normal license testing and renewal, and pushing the responsibility for verifying producer completions to the issuing insurance companies, is growing. It is in place now in many states for LTCI, flood insurance, Medicare, and Medi-gap coverage, and equity-indexed annuities. What can carriers do? Carriers can use the commercially available systematic solutions that capture and report all types of training across multiple vendors to multiple carriers and avoid forcing producers to take redundant training for multiple vendors or multiple states, or provide certified proof every time they write a new policy or become appointed with a new annuity carrier.

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If you are interested in learning about LIMRA's Annuity XT system — a tracking solution for fixed annuity training requirements — contact Meggan Tufveson at 860-285-7859 or usclientservices@limra.com.