

1200 Life Insurance and Annuities

1214 Senior Protection in Annuity Transactions

1.0 Purpose

The purpose of this regulation is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

2.0 Scope

This regulation shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

3.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 **Del.C.** §§311, 2304 and 2312. It is promulgated in accordance with 29 **Del.C.** Chapter 101.

4.0 Exemptions

Unless otherwise specifically included, this regulation shall not apply to recommendations involving:

- 4.1 Direct response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this regulation;
- 4.2 Contracts used to fund:
 - 4.2.1 An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - 4.2.2 A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - 4.2.3 A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
 - 4.2.4 A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - 4.2.5 Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - 4.2.6 Formal prepaid funeral contracts.

5.0 Definitions

“Annuity” means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

“Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

“Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

“Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual senior consumer that results in an annuity transaction in accordance with that advice.

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“Senior consumer” means a person sixty-five (65) years of age or older. In the event of a joint purchase by more than one party, the purchaser will be considered to be a senior consumer if any of the parties is age sixty-five (65) or older.

6.0 Duties of Insurers and Insurance Producers

- 6.1 In recommending to a senior consumer the purchase or exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.
- 6.2 Prior to the execution of an annuity transaction resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:
 - 6.2.1 the senior consumer’s financial status;
 - 6.2.2 the senior consumer’s tax status;
 - 6.2.3 the senior consumer’s investment objectives; and
 - 6.2.4 such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.
- 6.3 The following conditions shall apply to transactions contemplated by this regulation:
 - 6.3.1 Except as provided in section 6.3.2, neither an insurance producer, or an insurer where no producer is involved, shall have any obligation to a senior consumer under section 6.1 related to any annuity transaction if a consumer:
 - 6.3.1.1 refuses to provide relevant information requested by the insurer or insurance producer;
 - 6.3.1.2 decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
 - 6.3.1.3 fails to provide complete or accurate information.
 - 6.3.2 An insurer or insurance producer’s recommendation subject to section 6.3.1 shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.
- 6.4 The following procedures shall apply to transactions contemplated by this regulation:
 - 6.4.1 Except as provided in sections 6.4.2 and 6.4.3, an insurer shall establish and maintain a system to supervise the insurer’s, and the insurer’s insurance producers’, recommendations to senior consumers that is reasonably designed to achieve compliance by the insurer and its insurance producers with this regulation, including, but not limited to:
 - 6.4.1.1 written procedures; and
 - 6.4.1.2 periodic reviews of its distribution methods that are reasonably designed to assist in detecting and preventing violations of this regulation.
 - 6.4.2 The following conditions shall apply to the delegation of an insurer’s obligations:
 - 6.4.2.1 An insurer may, by contract, delegate to a third party the obligation to perform the functions required by section 6.4.1 with respect to insurance producers under contract with or employed by the third party.
 - 6.4.2.2 An insurer shall make reasonable inquiry to assure that the third party contracting under section 6.4.2.1 is performing the functions required under section 6.4.1 and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:
 - 6.4.2.2.1 The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

- 6.4.2.2.2 The insurer, based on reasonable selection criteria, periodically selects third parties contracting under section 6.4.2.1 for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.
- 6.4.3 An insurer is not required by section 6.4.1 to:
 - 6.4.3.1 review, or provide for review of, all insurance producer solicited transactions; or
 - 6.4.3.2 include in its supervisory system an insurance producer's recommendations to senior consumers of products other than the insurer's annuities.
- 6.4.4 Section 7 does not apply to this subsection.
- 6.4.5 The commissioner may order:
 - 6.4.5.1 an insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by the insurer's insurance producer's, violation of this regulation;
 - 6.4.5.2 an insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation; and
 - 6.4.5.3 a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.
- 6.5 Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

7.0 Enforcement

- 7.1 The commissioner may:
 - 7.1.1 Order an insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's (who is not an agent of the senior consumer), violation of this regulation.
 - 7.1.2 Order an insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.
 - 7.1.3 Order a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.
 - 7.1.4 Impose such penalties or sanctions as may be appropriate in accordance with the provisions of 18 **Del.C.** Chapters 3, 17 and/or 23.

8.0 Recordkeeping

- 8.1 Insurers and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
- 8.2 Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

9.0 Severability

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If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

10.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 **Del.C.** §2304. In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 **Del.C.** §2304.

11.0 Effective Date

This regulation shall become effective on July 1, 2006.

9 DE Reg. 1081 (01/01/06)