

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 2304 and 2312 (18 **Del.C.** §§311, 2304 & 2312)
18 **DE Admin. Code** 1214

PROPOSED

PUBLIC NOTICE

1214 Suitability In Annuity Transactions

A. Type of Regulatory Action Required

Proposal of amendments to Regulation 1214 Suitability In Annuity Transactions

B. Synopsis of Subject Matter of the Regulation

Regulation 1214 requires insurers and producers to establish a system to supervise recommendations made in the marketing and sale of annuities, which standards are also consistent with the standards imposed by the Financial Industry Regulatory Authority (FINRA). The regulation is an adoption of the National Association of Insurance Commissioners (NAIC) Model Regulation #275, Suitability in Annuity Transactions Model Regulation, as amended by the NAIC from time to time (Model #275).

In 2017, the NAIC appointed its Annuity Suitability (A) Working Group to review and revise, as necessary, Model #275, to promote greater uniformity across NAIC-member jurisdictions. Renewed interest in the model was prompted, in part, by work being done at the federal level. As described on the NAIC's website https://content.naic.org/cipr_topics/topic_annuity_suitability_best_interest_standard.htm:

In April 2016, the U.S. Department of Labor (DOL) completed regulations broadening its definition of "fiduciary investment advice" under the federal Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC). However, the rule was vacated by the 5th U.S. Circuit Court of Appeals in March of 2018 before it took effect.

The U.S. Securities and Exchange Commission (SEC) released a proposed rule package on April 18, 2018, updating the standard of care broker-dealers and investment advisers would be required to provide to retail investors. The NAIC submitted comments to the SEC during the exposure period to further coordinate efforts so that the respective regulatory developments can provide consistency for consumers, industry, and regulators. The final rule took effect on June 30, 2020.

In 2018, the New York State Department of Financial Services proposed a new "best interest" standard for agents and brokers licensed to sell life insurance and annuity products in the state aligning with the now vacated DOL "fiduciary rule" for retirement savings. Under the rule, product sales must prioritize customer's interest over sales commissions and agents and brokers' compensation should not be influenced by the products recommended. The rule went into full effect on February 1, 2020.

In 2019, the NAIC Annuity Suitability (A) Working Group completed updates to Model #275 which began in November 2017. The goal of the Working Group was to seek clear, enhanced standards for annuity sales so consumers understand the products they purchase, are made aware of any material conflicts of interest, and are assured those selling the products do not place their financial interests above consumers' interests.

The NAIC membership approved revisions to Model #275 in February of 2020 clarifying that all recommendations by agents and insurers must be in the "best interest" of the consumer and that agents and carriers may not place their financial interest ahead of the consumers' interest in making a recommendation. The model now requires agents and carriers to act with "reasonable diligence, care and skill" in making recommendations.

To satisfy the newly added "best interest" standard under Model #275 as amended in 2020, agents (producers) and carriers must satisfy four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation. The revisions also include enhancements to the current model's supervision system to assist agents (producers) and carriers in complying with the regulation (the "safe harbor" provisions).

It is noteworthy that states must work toward adopting the 2020 revisions within five years after adoption of the revisions by the full NAIC membership to maintain their authority to regulate the sale of fixed annuities. This is because Section 989J of the Dodd-Frank Act, known as the Harkin Amendment, applies to the revised model regulation. Section 989J confirms state authority to regulate the sale of fixed indexed annuities and exemption from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the carrier issuing the contract is domiciled:1) has adopted requirements that "substantially meet or exceed the minimum

requirements" established by the 2010 version of Model #275; and 2) "adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulation" within 5 years of the adoption by the NAIC.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1 - Purpose, as follows:

Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.

Accordingly, the Department is now proposing to update Regulation 1214 to incorporate the February 2020 amendments to Model #275. The authority for the proposed amendments is 18 **Del.C.** §§311, 2304, and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

C. Notice and Public Comment

As required by 18 **Del.C.** §2312, the Department has determined to hold a virtual public hearing on the proposed amendments to Regulation 1214 on Monday, December 21, 2020 at 9:00 a.m. The hearing will be facilitated through WebEx at <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=m8ec115baff535326feed4cc487f11a32>, meeting number (access code): 173 085 6988 and meeting password: DAhnHBS28e5. Holding a virtual public meeting is specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions).

The proposed amendments appear below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 5th day of January 2021. Any such requests should be directed to:

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1214 Suitability In Annuity Transactions

1.0 Purpose, Scope and Authority

- 1.1 The purpose of this regulation is to require producers, as defined in this regulation, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately effectively addressed.
- 1.2 Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation regulation or to subject a producer to civil liability under the best interest standard of care outlined in Section 4.0 of this regulation or under standards governing the conduct of a fiduciary or a fiduciary relationship.
- 1.3 This regulation shall apply to any sale or recommendation to purchase, exchange or replace of an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.
- 1.4 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.** Ch. 101.

2.0 Exemptions

- 2.1 Unless otherwise specifically included, this regulation shall not apply to transactions involving:
 - 2.1.1 Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
 - 2.1.2 Contracts used to fund:

- 2.1.2.1 An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
- 2.1.2.2 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;
- 2.1.2.3 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 tax-exempt~~ organization under section 457 of the IRC; or
- 2.1.2.4 A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- ~~2.1.2.5~~ 2.1.3 Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- ~~2.1.2.6~~ 2.1.4 Formal prepaid funeral contracts.

3.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Annuity" means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.

"Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

"Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives, including, at a minimum, the following:

1. Age;
2. Annual income;
3. Financial situation and needs including debts and other obligations;
4. Financial experience;
5. Insurance needs;
6. Financial objectives;
7. Intended use of the annuity;
8. Financial time horizon;
9. Existing assets or financial products, including investment, annuity and insurance holdings;
10. Liquidity needs;
11. Liquid net worth;
12. Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
13. Financial resources used to fund the annuity; and
14. Tax status.

"Continuing education credit" or "CE credit" means one continuing education credit as defined in 18 DE Admin. Code 504, Section 2.0.

"Continuing education provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to 18 DE Admin. Code 504, Section 2.0.

"FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

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

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

"Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

"Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. "Material conflict of interest" does not include cash compensation or non-cash compensation.

"Non-cash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

"Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

"Producer" means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this regulation, "producer" includes an insurer where no producer is involved.

"Recommendation" means advice provided by ~~an insurance producer, or an insurer where no producer is involved,~~ a producer to an individual consumer that ~~results was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.~~ Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

"Replacement" means a transaction in which a new ~~policy or contract~~ annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer ~~if there is no whether or not a producer is involved,~~ that by reason of the transaction, an existing annuity or other insurance policy or contract has been or is to be any of the following:

- (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) Reissued with any reduction in cash value; or
- (5) Used in a financed purchase.

"Suitability information" means ~~information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

- (1) Age;
- (2) Annual Income;
- (3) Financial situation and needs, including the financial resources used for the funding of the annuity;
- (4) Financial experience;
- (5) Financial objectives;
- (6) Intended use of the annuity;
- (7) Financial time horizon;
- (8) Existing assets, including investment and life insurance holdings;
- (9) Liquidity needs;
- (10) Liquid net worth;
- (11) Risk tolerance; and
- (12) Tax Status.

"SEC" means the United States Securities and Exchange Commission.

4.0 Duties of Insurers and of Insurance Producers

4.1 In recommending to a consumer the purchase of an annuity or the 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 consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

- 4.1.1 The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;
- 4.1.2 The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;

4.1.3 The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

4.1.4 In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

4.1.4.1 The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

4.1.4.2 The consumer would benefit from product enhancements and improvements; and

4.1.4.3 The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

4.2 Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

4.3 Except as permitted under subsection 4.4, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

4.1 Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the obligations regarding care, disclosure, conflict of interest and documentation set forth in subsections 4.2 through 4.5 of this regulation.

4.2 Care Obligation.

4.2.1 The producer, in making a recommendation, shall exercise reasonable diligence, care and skill to:

4.2.1.1 Know the consumer's financial situation, insurance needs and financial objectives;

4.2.1.2 Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

4.2.1.3 Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

4.2.1.4 Communicate the basis or bases of the recommendation.

4.2.2 The requirements under subsection 4.2.1 of this regulation:

4.2.2.1 Include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity;

4.2.2.2 Require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure;

4.2.2.3 Do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation;

4.2.2.4 Include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features;

4.2.2.5 Apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any;

4.2.2.6 Do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended;

4.2.2.7 Do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

4.2.3 The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively

addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of subsection 4.2 of this regulation may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

4.2.4 In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

4.2.4.1 The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

4.2.4.2 The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

4.2.4.3 The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

4.2.5 Nothing in this regulation should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

4.3 Disclosure obligation.

4.3.1 Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:

4.3.1.1 A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

4.3.1.2 An affirmative statement on whether the producer is licensed and authorized to sell the following products:

4.3.1.2.1 Fixed annuities;

4.3.1.2.2 Fixed indexed annuities;

4.3.1.2.3 Variable annuities;

4.3.1.2.4 Life insurance;

4.3.1.2.5 Mutual funds;

4.3.1.2.6 Stocks and bonds; and

4.3.1.2.7 Certificates of deposit.

4.3.1.3 An affirmative statement describing the insurers for whom the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products, using the following descriptions:

4.3.1.3.1 From one insurer;

4.3.1.3.2 From two or more insurers; or

4.3.1.3.3 From two or more insurers although primarily contracted with one insurer.

4.3.1.4 A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and

4.3.1.5 A notice of the consumer's right to request additional information regarding cash compensation described in subsection 4.3.2 of this regulation.

4.3.2 Upon request of the consumer or the consumer's designated representative, the producer shall disclose:

4.3.2.1 A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and

4.3.2.2 Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

4.3.3 Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential

changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

4.4 Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

4.5 Documentation obligation. A producer shall, at the time of recommendation or sale:

4.5.1 Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

4.5.2 Obtain a consumer signed statement on a form substantially similar to Appendix B documenting:

4.5.2.1 A customer's refusal to provide the consumer profile information, if any; and

4.5.2.2 A customer's understanding of the ramifications of not providing the customer's consumer profile information or providing insufficient consumer profile information; and

4.5.3 Obtain a consumer signed statement on a form substantially similar to Appendix C acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

4.6 Application of the best interest obligation. Any requirement applicable to a producer under subsections 4.1 through 4.5 of this regulation shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

4.4 No Obligation to Consumers in Certain Circumstances

4.7 Transactions not based on a recommendation.

4.4.1 4.7.1 Except as provided under subsection 4.4.2 4.7.2 of this regulation, neither an insurance producer, nor an insurer, a producer shall have any no obligation to a consumer under subsections 4.1 or 4.3 subsection 4.2 of this regulation related to any annuity transaction if:

4.4.1.1 4.7.1.1 No recommendation is made;

4.4.1.2 4.7.1.2 A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

4.4.1.3 4.7.1.3 A consumer refuses to provide relevant suitability consumer profile information and the annuity transaction is not recommended; or

4.4.1.4 4.7.1.4 A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

4.4.2 4.7.2 An insurer's issuance of an annuity subject to subsection 4.4.1 4.7.1 of this regulation shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

4.5 An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

4.5.1 Make a record of any recommendation subject to subsection 4.1 of this regulation;

4.5.2 Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

4.5.3 Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

4.8 Supervision system.

4.8.1 Except as permitted under subsection 4.7 of this regulation, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.

4.6 4.8.2 An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

4.6.4 4.8.2.1 The insurer shall establish and maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

- ~~4.6.2~~ 4.8.2.2 The insurer shall establish and maintain standards for ~~insurance~~ producer product training and shall establish and maintain reasonable procedures to require its ~~insurance~~ producers to comply with the requirements of Section 5.0 of this regulation;
- ~~4.6.3~~ 4.8.2.3 The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its ~~insurance~~ producers;
- ~~4.6.4~~ 4.8.2.4 The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that ~~a recommendation is suitable~~ the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. ~~Such~~ The review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. ~~Such an~~ The electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- ~~4.6.5~~ 4.8.2.5 The insurer shall establish and maintain reasonable procedures to detect recommendations that are not ~~suitable~~ in compliance with subsections 4.2, 4.3, 4.5 and 4.6 of this regulation. This may include, but is not limited to, confirmation of ~~consumer suitability~~ the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subsection prevents an insurer from complying with this subsection by applying sampling procedures, or by confirming ~~suitability~~ the consumer profile information or other required information under Section 4.0 of this regulation after issuance or delivery of the annuity; ~~and~~
- 4.8.2.6 The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under Section 4.0 of this regulation;
- 4.8.2.7 The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
- 4.8.2.8 The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and
- ~~4.6.6~~ 4.8.2.9 The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- ~~4.7~~ 4.8.3 Nothing in ~~this subsection 4.8 of this regulation~~ restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under subsection ~~4.6 4.8 of this regulation~~. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 6.0 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subsection ~~4.8 4.8.4 of this regulation~~.
- ~~4.8~~ 4.8.4 An insurer's supervision system under subsection ~~4.6 4.8 of this regulation~~ shall include supervision of contractual performance ~~under this subsection. This includes, including~~ but is not limited to, the following:
- ~~4.8.4~~ 4.8.4.1 Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
- ~~4.8.2~~ 4.8.4.2 Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- ~~4.9~~ 4.8.5 An insurer is not required to include in its system of ~~supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.~~ supervision:
- 4.8.5.1 A producer's recommendation to consumers of products other than the annuities offered by the insurer; or
- 4.8.5.2 Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

- 4.10 ~~An insurance producer shall not~~
- 4.9 Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:
- 4.10.1 ~~4.9.1~~ Truthfully responding to an insurer's request for confirmation of ~~suitability~~ the consumer profile information;
- 4.10.2 ~~4.9.2~~ Filing a complaint; or
- 4.10.3 ~~4.9.3~~ Cooperating with the investigation of a complaint.
- 4.11 ~~Sales~~ 4.10 Safe harbor.
- 4.10.1 ~~Recommendations and sales of annuities made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions comparable standards as defined in subsection 4.10.5 of this regulation shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer all recommendations and sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection shall limit the Insurance Commissioner's ability to investigate and enforce (including investigate) the provisions of this regulation.~~
- 4.10.2 Nothing in subsection 4.10.1. of this regulation shall limit the insurer's obligation to comply with subsection 4.8.1 of this regulation, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.
- 4.12 ~~4.10.3~~ For subsection ~~4.11 4.10.1~~ of this regulation to apply, an insurer shall:
- 4.12.1 ~~4.10.3.1~~ Monitor the ~~FINRA member broker-dealer~~ relevant conduct of the financial professional seeking to rely on subsection 4.10.1 of this regulation or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws, using information collected in the normal course of an insurer's business; and
- 4.12.2 ~~4.10.3.2~~ Provide to the ~~FINRA member broker-dealer~~ entity responsible for supervising the financial professional seeking to rely on subsection 4.10.1 of this regulation, such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist the FINRA member broker-dealer entity to maintain its supervision system.
- 4.10.4 For purposes of subsection 4.10 of this regulation, "financial professional" means a producer that is regulated and acting as:
- 4.10.4.1 A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;
- 4.10.4.2 An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or
- 4.10.4.3 A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.
- 4.10.5 For purposes of subsection 4.10 of this regulation, "comparable standards" means:
- 4.10.5.1 With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;
- 4.10.5.2 With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities laws including but not limited to, the Form ADV and interpretations; and
- 4.10.5.3 With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

- 5.1 ~~An insurance~~ A producer shall not solicit the sale of an annuity product unless the ~~insurance~~ producer has adequate knowledge of the product to recommend the annuity and the ~~insurance~~ producer is in compliance with the insurer's standards for product training. ~~An insurance~~ A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- 5.2 ~~An insurance~~ A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the Department of Insurance and provided by the Department of Insurance-approved education provider.
- 5.2.1 ~~Insurance producers~~ Producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
- 5.2.2 The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE ~~credits, but~~ credits but may be longer.
- 5.2.3 The training required under this subsection shall include information on the following topics:
- 5.2.3.1 The types of annuities and various classifications of annuities;
- 5.2.3.2 Identification of the parties to an annuity;
- 5.2.3.3 How ~~fixed, variable and indexed~~ product specific annuity contract ~~provisions~~ features affect consumers;
- 5.2.3.4 The application of income taxation of qualified and non-qualified annuities;
- 5.2.3.5 The primary uses of annuities; and
- 5.2.3.6 Appropriate standard of conduct, sales practices, replacement and disclosure requirements.
- 5.2.4 Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- 5.2.5 A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to ~~insurance~~ producer continuing education courses as set forth in 18 **DE Admin. Code** 504, Section 2.0.
- 5.2.6 A producer who has completed an annuity training course approved by the Department of Insurance prior to August 1, 2021 shall, within six (6) months after August 1, 2021, complete either:
- 5.2.6.1 A new four (4) credit training course approved by the Department of Insurance after August 1, 2021; or
- 5.2.6.2 An additional one-time one (1) credit training course approved by the Department of Insurance and provided by the Department of Insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.
- ~~5.2.6~~ 5.2.7 Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with 18 **DE Admin. Code** 504, Section 2.0.
- ~~5.2.7~~ 5.2.8 Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with 18 **DE Admin. Code** 504, Section 2.0.
- ~~5.2.8~~ 5.2.9 The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.
- 5.2.10 The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.
- ~~5.2.9~~ 5.2.11 An insurer shall verify that ~~an insurance~~ a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection 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.

6.0 Compliance Mitigation; Penalties; Enforcement

- 6.1 An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its ~~insurance~~ producer, the Commissioner may order:

- 6.1.1 An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer's, insurer; an entity contracted to perform the insurer's supervisory duties or by its insurance producer's, violation of this regulation the producer;
- 6.1.2 A general agency, independent agency or the ~~insurance~~ producer to take reasonably appropriate corrective action for any consumer harmed by the ~~insurance~~ producer's violation of this regulation; and
- 6.1.3 Appropriate penalties and sanctions.
- 6.2 Any applicable penalty under 18 ~~Del.C.~~ Chapters 3, 17 ~~and/or~~ or 23 for a violation of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.
- 6.3 The authority to enforce compliance with this regulation is vested exclusively with the Commissioner.

7.0 Recordkeeping

- 7.1 Insurers, general agents, independent agencies and producers shall maintain or be able to make available to the Commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for five (5) 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 a producer.
- 7.2 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.

7.0 8.0 Effective Date

This regulation was first published on January 1, 2006 and first became effective on July 1, 2006, six months after the date the regulation was first published. The 2016 amendments to this regulation shall take effect on July 1, 2017, six (6) months after the date the amendments to the regulation is were published as final. The 2021 amendments to this regulation shall become effective on August 1, 2021, which date is six (6) months after the date the amendments to the regulation are published as final.

9 DE Reg. 1081 (01/01/06)
20 DE Reg. 456 (12/01/16)

APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES
Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____

Business\Agency Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

National Producer Number in [state]: _____

CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to you in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products,

such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- Fixed or Fixed Indexed Annuities
- Variable Annuities
- Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

- Mutual Funds
- Stocks/Bonds
- Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

| | |
|--|--|
| <u>Annuities from Only One (1) Insurer</u> | <u>Annuities from Two or More Insurers</u> |
| <u>Annuities from Two or More Insurers although I primarily sell annuities from:</u> | |

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

Commission, which is usually paid by the insurance company or other sources. If other sources, describe:

_____.

Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

Other (Describe): _____.

If you have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

Drafting Note: This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.

Drafting Note: The acknowledgement and signature should be in immediate proximity to the disclosure language.

By signing below, you acknowledge that you have read and understand the information provided to you in this document.

Customer Signature

Date

Agent (Producer) Signature

Date

APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are you being given this form?

You're buying a financial product - an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company needs information about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets your needs, objectives and situation. You may lose protections under the Insurance Code of [this state] if you sign this form or provide inaccurate information.

Statement of Purchaser:

I **REFUSE** to provide this information at this time.

I have chosen to provide **LIMITED** information at this time.

Customer Signature

Date

APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

Why are you being given this form? You are buying a financial product - an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of [this state].

Customer Signature

Date

Agent/Producer Signature

Date

24 DE Reg. 533 (12/01/20) (Prop.)