

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF LIFE AND HEALTH

Advertisement of Life Insurance and Annuities; Disclosure Requirements for Annuities Directly Solicited to Consumers; and Suitability Requirements for Annuities Directly Solicited to Consumers

Adopted Amendments: N.J.A.C. 11:4-59A.1, 59A.2, 59A.4, and 59A.6

Adopted Repeal and New Rule: N.J.A.C. 11:4-59A.3

Adopted New Rules: N.J.A.C. 11:4-59A Appendices A, B, and C

Proposed: September 3, 2024, at 56 N.J.R. 1773(a).

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments: January 21, 2025, at 57 N.J.R. 171(a).

Adopted: March 27, 2025, by Justin Zimmerman, Commissioner, Department of Banking and Insurance.

Filed: March 27, 2025, as R.2025 d.049, **with substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-1, and with **non-substantial changes** not requiring additional notice and public comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 17:22A-26 et seq., 17B:25-34 et seq., and 17B:30-1 et seq.

Effective Date: April 21, 2025.

Expiration Date: March 26, 2026.

Summary of Public Comments and Agency Responses:

Comments on the original notice of proposed amendments were received from Pam Heinrich, General Counsel and Director of Government Affairs, National Association for Fixed Annuities (NAFA); Kim O'Brien, CEO, Federation of Americans for Consumer Choice, Inc. (FACC); Sarah Wood, Director of State Policy and Regulatory Affairs, Insured Retirement Institute (IRI); Michael Manginelli, President, National Association of Insurance and Financial Advisors – New Jersey (NAIFA-NJ); Vincent J. Ryan, Regional Vice President – State Relations, American Council of Life Insurers (ACLI); and Brian Quigley, Vice President of Government Affairs, Prudential-Financial Inc. (Prudential).

Comments on the notice of proposed substantial changes upon adoption to proposed amendments were received from Sarah Wood, Director of State Policy and Regulatory Affairs, IRI; Vincent J. Ryan, Regional Vice President – State Relations, ACLI; Pam Heinrich, General Counsel and Director of Government Affairs, NAFA; Michael Manginelli, President, NAIFA-NJ; and Kim O'Brien, CEO, FACC.

1. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal Upon Adoption

N.J.A.C. 11:4-59.2

1. COMMENT: The proposed definition of “recommendation” should be amended to include advice that was intended to, or does, result in the purchase, exchange, or replacement of an annuity, in accordance with that advice, consistent with the definition set forth in the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation #275 (Model Regulation).

RESPONSE: The Department agrees that the suggested change should be made to the definition of “recommendation.” Expanding the definition to include recommendations that were intended

to result in a purchase, exchange, or replacement of an annuity aligns the Department's rules with the Model Regulation and allows the Department to exercise the intended oversight.

N.J.A.C. 11:4-59A.3

2. COMMENT: Proposed N.J.A.C. 11:4-59A.3(c) provides that a producer shall provide a consumer with a completed Insurance Agent (Producer) Disclosure for Annuities Form. Several commenters suggested that the Department incorporate the NAIC's Appendix A into the proposed rulemaking as an appendix or change the rule to explicitly reference the NAIC Model Regulation form.

RESPONSE: The Department agrees with the suggested change and has incorporated the NAIC Model Regulation form at N.J.A.C. 11:4-59A Appendix A, while also permitting the use of a substantially similar form.

3. COMMENT: Proposed N.J.A.C. 11:4-59A.3(e) provides that a producer, at the time of recommendation or sale, obtain a consumer -signed Consumer Refusal to Provide Information Form, which shall document a consumer's refusal to provide the consumer profile information, if any; and a consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information. Several commenters expressed that the Department incorporate the NAIC's Appendix B into the proposed rulemaking as an appendix or change the rule to explicitly reference the NAIC Model Regulation form.

RESPONSE: The Department agrees with the suggested change and has incorporated the NAIC Model Regulation form at N.J.A.C. 11:4-59A Appendix B, while also permitting the use of a substantially similar form.

4. COMMENT: Proposed N.J.A.C. 11:4-59A.3(e)3 provides that a producer, at the time of a recommendation or sale, shall obtain a consumer signed Consumer Decision to Purchase an Annuity Not Based on a Recommendation Form, acknowledging the annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the producer's recommendation. Several commenters expressed that the Department should incorporate the NAIC's Appendix C into the proposed rulemaking as an appendix or change the rule to explicitly reference the NAIC Model Regulation form.

RESPONSE: The Department agrees with the suggested change and has incorporated the NAIC Model Regulation form at N.J.A.C. 11:4-59A Appendix C, while also permitting the use of a substantially similar form.

5. COMMENT: Several commenters expressed concern over the use of the words "suitable" and "suitability" at N.J.A.C. 11:4-59A.3(i)5, as this reference is a vestige of the older "suitability" standard, which the NAIC is seeking to do away with in favor of the enhanced best interest standard for annuity transactions. One commenter suggested replacing "suitable" with a reference to proposed subsections (a) through (e), (g), (k), and (l). One commenter suggested replacing "suitable" with a reference to proposed subsections (a) through (e). One commenter did not specify specific subsections to reference. One commenter suggested replacing "suitable" with a reference to subsections (a) through (g), (k), and (l).

RESPONSE: The Department agrees that reference to "suitable" and "suitability" should be deleted from N.J.A.C. 11:4-59A.3(i)5. The Department is proposing the addition of a cross-reference to subsections (a) through (g), (k), and (l), which set forth the obligations that

must be met to satisfy the enhanced best interest standard, transactions not based on a recommendation, prohibited practices, and safe harbor protections consistent with the Model Regulation. In addition, the Department is proposing the addition of the phrase “required information,” removing any references to the previous standard. The Department’s changes to this provision do not limit the Department’s oversight or what is intended by the Model Regulation.

N.J.A.C. 11:4-59A.4

6. COMMENT: Several commenters proposed amendments at N.J.A.C. 11:4-59A.4(c), which requires insurance producers who held a life insurance line of authority on February 4, 2013, and desired to sell annuities, complete certain insurance producer training obligations by August 4, 2013, while also requiring that an individual who wishes to obtain a life insurance line of authority on or after February 4, 2013, may not engage in the sale of annuities until an annuity training course is completed. The commenters seek to remove references to the February 4, 2013 date and replace it with a reference to the effective date of this rulemaking and references to August 4, 2013, with a date six months after the effective date of this rulemaking.

RESPONSE: The Department of Banking and Insurance (Department) agrees with the commenters that the dates appearing at N.J.A.C. 11:4-59A.4(c) should be removed, as they are outdated, and language should be added consistent with the Model Regulation, which provides that an insurance producer who holds a life insurance line of authority on the effective date of this rulemaking must complete the requisite training course within six months of that effective date, and, that individuals who wish to obtain a life insurance line of authority on or after the effective date of this rulemaking may not engage in the sale of annuities until the course is completed.

2. Comments Received During Initial Comment Period, Not Giving Rise to Substantial Changes in Proposal Upon Adoption

N.J.A.C. 11:4-59.2

7. COMMENT: The proposed definition of “consumer profile information” provides for consideration of “[A]ny other factors set forth at N.J.S.A. 17B:25-38b not referenced or subsumed in the factors set forth at 1 through 14 above.” The inclusion of this factor is not consistent with the Model Regulation. The Department should remove this factor from the proposed definition of “consumer profile information.”

RESPONSE: The Department does not agree that the suggested change to the definition of “consumer profile information” is necessary. The additional factor in the proposed rulemaking cites at N.J.S.A. 17B:25-38b, which concerns annuity suitability standards that also apply to producers. The inclusion of this additional factor serves to remind producers that they must also comply with N.J.S.A. 17B:25-38b.

8. COMMENT: The proposed definition of “replacement” should be amended to use the term “annuity” in lieu of the term “policy or contract,” consistent with the Model Regulation.

RESPONSE: The Department does not agree with the suggested change to the definition of “replacement.” The definition of “replacement” in the existing rule includes an annuity since an annuity is a contract pursuant to N.J.S.A. 17B:17-5. The Department notes that the existing

definition of “replacement” reflects the NAIC’s Life Insurance and Annuities Replacement Model Regulation (#613).

N.J.A.C. 11:4-59A.3

9. COMMENT: One commenter stated that N.J.A.C. 11:4-59A.3(a) should be amended to include “the following” before “obligations regarding care, disclosure, conflict of interest, and documentation”, which is consistent with the Model Regulation. Another commenter stated that N.J.A.C. 11:4-59A.3(a) should be amended to add “set forth in (b), (c), (d), and (e) below” after “obligations regarding care, disclosure, conflict of interest, and documentation.”

RESPONSE: The Department agreed that “the following” should be added to be consistent with the Model Regulation. Moreover, the Department agrees that “set forth at (b), (c), (d), and (e) below” should also be added. These changes do not substantively modify the proposed rule.

10. COMMENT: A commenter requested that the notice of proposal be modified so that N.J.A.C. 11:4-59A becomes effective six months after the date the rulemaking is adopted to provide adequate time for implementation.

RESPONSE: The Department does not agree with the suggested change. Rulemakings become effective upon the date of publication in the New Jersey Register pursuant to N.J.A.C.

1:30-6.6(b).

3. Comments Received Upon Publication of Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments to N.J.A.C. 11:4-59A.1, 59A.2, 59A.3, 59A.4, and 59A.6, and 11:4-59A Appendices A, B, and C

11. COMMENT: The IRI, ACLI, NAFA, NAIFA-NJ, and FACC wrote in support of the updated proposed amendments.

RESPONSE: The Department thanks the commenters for their support.

Summary of Agency-Initiated Changes:

The Department is deleting the text at N.J.A.C. 11:4-59A.1(d) which provides that the requirements of the subchapter shall apply effective August 4, 2013, as this date has long passed.

The Department is changing N.J.A.C. 11:4-59A.6(a)1 to require an insurer to take reasonably appropriate corrective action for any consumer harmed by an entity contracted to perform the insurer’s supervisory duties in violation of this subchapter, to align the Department’s regulations with the Model Regulation.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are not subject to any Federal requirements or standards.

Full text of the adoption, as proposed, follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks ***[thus]***; original proposed additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 59A. SUITABILITY AND INSURER SUPERVISION REQUIREMENTS FOR ANNUITIES DIRECTLY SOLICITED TO CONSUMERS

11:4-59A.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 17B:25-34 et seq., and 17B:30-1 et seq., ~~{to require [insurers to establish a system to supervise recommendations and to set forth standards and procedures for] **producers 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 [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.}~~ ~~**to require producers 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 so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.**~~

(b)——(No change.)

(c)——Unless otherwise specifically included, this subchapter shall not apply to transactions involving:

1.——(No change.)

2.——Contracts used to fund:

i.- iv.——(No change.)

[v.] **3.**—Settlements [of] or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process;

[vi.] ~~**4.**—Formal prepaid funeral contracts; and~~ (No change in text.)

[vii.] **5.**—Any transaction exempt [under] **pursuant to** N.J.S.A. 17B:25-38.}

[(d) The requirements in this subchapter shall apply August 4, 2013 and thereafter.]

[(e)] ***(d)*** (No change in text from proposal.)

11:4-59A.2 Definitions

Words and terms as defined at N.J.S.A. 17B:25-35, when used in this subchapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise or as further defined in this subchapter. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

_____ ...

“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;
14. Tax status; and
15. Any other factors set forth ~~at~~ in N.J.S.A. 17B:25-38b not referenced or subsumed in the factors set forth ~~at~~ in 1 through 14 above.

...
“Insurer” means a company required to be licensed ~~under~~ pursuant to the laws of this ~~S~~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. This 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~~ 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~~ pursuant to the laws of this ~~S~~state to sell, solicit, or negotiate insurance, including annuities. For purposes of this ~~regulation~~ rule ~~definition~~, “producer” includes an insurer where no producer is involved.

“Recommendation” means advice provided by a producer, or an insurer where no producer is involved, to an individual consumer that ***was intended to*** result*[s]* ***or does result*** in a purchase, exchange, or replacement of an annuity in accordance with that advice. This 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.

1.-5. ~~(No change.)~~...

“SEC” means the United States Securities and Exchange Commission.

[“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;
12. —Tax status; and
13. —Any other factors set forth in N.J.S.A. 17B:25-38b not referenced or subsumed in the factors set forth in 1 through 12 above.]

11:4-59A.3 Duties of insurers and of insurance producers

(a) In recommending to a consumer the purchase of an annuity, an insurance producer shall act in the best interest of the consumer pursuant to 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. An insurance producer has acted in the best interest of the consumer, if they have satisfied ***the following*** obligations regarding care, disclosure, conflict of interest, and documentation ***set forth at (b), (c), (d), and (e) below***.

(b)—An insurance producer shall exercise reasonable diligence, care, and skill to know the consumer's financial situation, insurance needs, and financial objectives; understand the available recommendation options after making a reasonable inquiry into options available to the producer; 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 communicate the basis or bases of the recommendation.

1. The producer must make reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

2. The producer must 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.

3. ~~Subsection (b)~~ This subsection does not create a fiduciary obligation or relationship and only creates a regulatory obligation as established in this ~~regulation~~ rule section.

4. 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~~

pursuant to the care obligation may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

5. The insurance producer must have 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.

6. ~~Subsection (b)~~This subsection applies to the particular annuity as a whole, the underlying sub-accounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.

7. The requirements ~~under pursuant to~~ this subsection do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

8. The requirements ~~under pursuant to~~ this subsection do not mean the producer has ongoing monitoring obligations ~~under pursuant to~~ the care obligation, although such an obligation may be separately owed ~~under pursuant to~~ the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.

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

i. 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;

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

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

10. Nothing in this ~~regulation rules~~subsection should be construed to require an insurance 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 ~~set forth contained in this rule~~section~~regulation~~; provided the insurance 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.

(c) Prior to the recommendation or sale of an annuity, the insurance producer must make the disclosures specified below.

1. The insurance producer shall provide to the consumer a completed Insurance Agent (Producer) Disclosure for Annuities Form*, **codified at N.J.A.C. 11:4-59A Appendix A or a substantially similar form ***, which shall include the following: which shall include the following:

i. ~~—~~A description of the scope and terms of the relationship with the consumer and the role of the insurance producer in the transaction;

ii. An affirmative statement on whether the insurance producer is licensed and authorized to sell the following products: fixed annuities, fixed indexed annuities, variable annuities, life insurance, mutual funds, stocks and bonds, and certificates of deposit;

iii. An affirmative statement describing the insurers that the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for: from one insurer₂, from two or more insurers₂, or from two or more insurers although primarily contracted with one insurer;

iv. A description of the sources and types of cash compensation and non-cash compensation to be received by the insurance 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, intermediary₂, or other producer₂, or by fee as a result of a contract for advice or consulting services; and

v. A notice of the consumer's right to request additional information regarding cash compensation described ~~in~~ at (c)2 below.

2. —Upon request of the consumer or the consumer's designated representative, the insurance producer shall disclose:

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

ii. 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

3. Prior to or at the time of the recommendation or sale of an annuity, the insurance 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, surrenders₂, 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 components₂, and market risk. -The requirements of this ~~sub~~paragraph are intended to supplement₂ and not replace₂ the disclosure requirements set forth ~~in~~ at N.J.A.C. 11:4-59.

(d) —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.

(e) A producer shall, at the time of recommendation or sale:

1. —Make a written record of any recommendation and the basis for the recommendation subject to (a) above;

2. Obtain a consumer signed Consumer Refusal to Provide Information Form*, codified at N.J.A.C. 11:4-59A Appendix B or a substantially similar form,* which shall document the following:

i. —A consumer's refusal to provide the consumer profile information, if any; and

ii. —A consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.

3. Obtain a consumer signed Consumer Decision to Purchase an Annuity Not Based on a Recommendation Form, ***codified at N.J.A.C. 11:4-59A Appendix C or a substantially similar form,*** acknowledging the annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(f)—A producer exercising 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, is subject to ~~subsections (a), (b), (c), (d), and (e) above.~~ 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.

(g)—Neither a producer, nor an insurer, shall have any obligation to a consumer ~~under pursuant to (b) above~~ related to any annuity transaction if any of the following ~~listed in~~ **(g) 1, 2, 3, or through (g) 4** below apply, except that an insurer's issuance of an annuity shall be reasonable ~~under pursuant to~~ all the circumstances actually known to the insurer at the time the annuity is issued:

- 1.—No recommendation is made;
2. —A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
3. —A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
- 4.—A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(h) —Except as provided ~~pursuant to~~ **by (g) above**, 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.

(i) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producer's compliance with this subchapter, including, but not limited to, the following:

1.—The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of the supervision system ~~regulation rule~~ and shall incorporate the requirements of this subchapter into relevant producer training manuals;

2.—The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements ~~at of~~ **N.J.A.C. 11:4-59A.4;**

3.—The insurer shall provide product-specific training and training materials ~~which that~~ explain all material features of its annuity products to its producers;

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 there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. Such 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 electronic or

other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

5. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not ~~*[suitable]*~~ ***in compliance with (a) through (g) above and (k) and (l) below***. This may include, but is not limited to, confirmation of 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 paragraph shall prevent an insurer from complying with this paragraph by applying sampling procedures, or by confirming the consumer profile information or other ~~*[suitability]*~~ ***required*** information after issuance or delivery of the annuity;

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 required information;**

7.—**The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;**

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 paragraph 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**

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.**

(j).—**Nothing ~~at~~ (i) above shall restrict an insurer from contracting for performance of a function (including maintenance of procedures) required ~~pursuant to~~ (i) above. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to N.J.A.C. 11:4-59A.6, regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with (i)1 above.**

1.—**An insurer's supervision system ~~under~~ pursuant to (i) above shall include supervision of contractual performance ~~under~~ pursuant to this subsection. This includes, but is not limited to, the following:**

i. —**Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and**

ii. —**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.**

2. —**An insurer is not required to include in its system of supervision:**

i.—**A producer's recommendations to consumers of products other than the annuities offered by the insurer; or**

ii.—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.

(k).—Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer’s request for confirmation of the consumer profile information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(l) —Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements ~~under~~ pursuant to this subsection. This applies to all recommendations and sales of annuities 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 Commissioner’s ability to investigate and enforce the provisions of this ~~regulation~~ rule.

1.—Nothing in this subsection shall limit the insurer’s obligation to comply with ~~subsection (h) above~~, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

2.—~~For subsection (h) this subsection to above~~ apply, an insurer shall:

i. Monitor the relevant conduct of the financial professional seeking to rely on ~~subsection (h) this subsection~~ or the entity responsible for supervising the financial professional, such as the financial professional’s broker-dealer or an investment adviser registered ~~under~~ pursuant to Ffederal or Sstate securities laws using information collected in the normal course of an insurer’s business; and

ii. Provide to the entity responsible for supervising the financial professional seeking to rely on ~~subsection this subsection (h)~~, such as the financial professional’s broker-dealer or investment adviser registered ~~under~~ pursuant to Ffederal or Sstate securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

—————3. —For purposes of this subsection, “financial professional” means a producer that is regulated and acting as:

i. —————A broker-dealer registered ~~under~~ pursuant to Ffederal or Sstate securities laws or a registered representative of a broker-dealer;

ii. —————An investment adviser registered ~~under~~ pursuant to Ffederal or Sstate securities laws or an investment adviser representative associated with the Ffederal or Sstate registered investment adviser; or

iii.—A plan fiduciary ~~under~~ pursuant to Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under pursuant to Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

4.—For purposes of this subsection, “comparable standards” means:

i. —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;

ii. —With respect to investment advisers registered ~~under~~ pursuant to ~~F~~federal or ~~S~~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~~ pursuant to the Investment Advisers Act of 1940 or applicable ~~s~~State securities law, including, but not limited to, the Form ADV and interpretations; and

iii. —With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status ~~under~~ pursuant to ERISA or the IRC and any amendments or successor statutes thereto.

11:4-59A.4 Insurance producer training

(a)-(b) (No change from proposal.)

(c) Insurance producers who hold a life insurance line of authority on ~~*[February 4, 2013]*~~ ***April 21, 2025,*** and who desire to sell annuities shall complete the requirements of this section by ~~*[August 4, 2013]*~~ ***October 21, 2025***. Individuals who obtain a life insurance line of authority on or after ~~*[February 4, 2013]*~~ ***April 21, 2025,*** may not engage in the sale of annuities until the annuity training course required ~~*[under]*~~ ***pursuant to*** this section has been completed.

(d) (No change.)

(e) The training required pursuant to this section shall include information on the topics set forth in the outline below:

1.-5. (No change.)

6. Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

(f)-(g) (No change.)

(h) An insurance producer who has completed an annuity training course approved by the Department prior to ~~*[(the effective date of this rulemaking)]*~~ ****April 21, 2025***, shall, by ~~*[(six months after the effective date of this rulemaking)]*~~ ****October 21, 2025***, complete either:

1. A new four-credit training course approved by the Department after ~~*[(the effective date of this rulemaking)]*~~ ****April 21, 2025***; or

2. An additional one-time one-credit training course approved by the Department and provided by an approved education provider on appropriate sales practices, replacement, and disclosure requirements pursuant to this section.

Recodify existing (h)-(j) as (i)-(k) (No change in text.)

(l) 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.

(m) An insurer shall verify that an insurance producer has completed the annuity training course required pursuant to this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility pursuant to this section 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.

11:4-59A.6 Compliance mitigation; penalties

(a) An insurer shall be responsible for compliance with this subchapter. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the Commissioner may order:

1. An insurer to take reasonably appropriate corrective action for any consumer harmed by the *[insurer's, or by its insurance producer's, violation of this subchapter]* ***insurer, an entity contracted to perform the insurer's supervisory duties, or by the producer***;

2. – 3. (No change.)

(Agency Note: New N.J.A.C. 11:4-59A Appendices A, B, and C follow without boldface and asterisks indicating new text; those portions of the appendices in boldface or italics are intended to be so permanently.)

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 NJ: _____

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 Deposit

Whose Annuities Can I Sell to You?

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from: _____.	

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:

<input type="checkbox"/>	Commission, which is usually paid by the insurance company or other sources. If other sources, describe: _____.
<input type="checkbox"/>	Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
<input type="checkbox"/>	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.

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 laws of New Jersey if You sign this form or provide inaccurate information.

Statement of Purchaser:

<input type="checkbox"/>	I <u>REFUSE</u> to provide this information at this time.
<input type="checkbox"/>	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 laws of New Jersey.

Customer Signature

Date

Agent/Producer Signature

Date

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April 21, 2025

Filed March 31, 2025