

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

Proposed Amendments: ~~—~~ N.J.A.C. 11:4-59A.1, ~~11:4-59A.2,~~ ~~11:4-59A.3,~~ and ~~11:4-59A.4~~

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

Authorized By: Justin Zimmerman, Acting Commissioner, Department of Banking and Insurance.

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.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2024-100.

Submit comments by November 2, 2024, to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes amendments, a repeal, and a new rule ~~proposes amendments to~~ at N.J.A.C. 11:4-59A, which concerns suitability and insurer supervision requirements for annuities directly solicited to consumers, to implement N.J.S.A. 17B:25-34 et seq. (Act), and reflect recent revisions to the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation #275 (Model Regulation).

The Act prescribes marketing, information disclosure, and product suitability requirements for all current and future issues of individual fixed and variable deferred and immediate annuity contracts solicited directly to consumers. ~~The Department adopted rules to implement the Act in 2011. In 2012, the NAIC adopted revisions to its Model Regulation, which sets forth specific standards and requirements for determining suitability and insurer supervision procedures. In 2012, the Department's rules were amended to conform with the NAIC's Model Regulation.~~

In 2020, the NAIC revised the Model Regulation to establish a framework for an enhanced standard of conduct and ensure insurance producers are properly educated about the updated standard. ~~The revised Model Regulation establishes a "best interest standard" that a producer or an insurer must satisfy when recommending an annuity product for their client. The obligations include care, disclosure, conflict of interest, and documentation. To satisfy the four obligations, producers must: know the consumer's financial situation, insurance needs, and financial objectives; understand the available recommendation options; have a reasonable basis~~

to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives; communicate the basis of the recommendation to the consumer; disclose their role in the transaction, their compensation, and any material conflicts of interest; and, document, in writing, any recommendation and the justification for such recommendation.

In addition, the revised Model Regulation requires that insurance producers successfully complete a ~~4~~four-hour annuity product training course that covers the types of annuities, uses of annuities, taxation of annuities, and more. -Importantly, the Model Regulation requires that appropriate sales practices are part of this training. -Existing insurance producers have the option to either complete a new ~~4~~four-hour course approved by the Department that includes the best interest standard or a one~~+~~-hour supplementary training course specific to the best interest standard.

The proposed amendments align New Jersey's ~~regulations~~rules with the 2020 amendments to the Model Regulation to ensure consistency with the updated national standard and further effective regulatory oversight.

A summary of the proposed amendments, repeal, and new rule ~~proposed amendments~~ follows:

The Department proposes to amend the stated purpose of the subchapter ~~appearing at~~ N.J.A.C. 11:4-59A.1(a), to reflect the enhanced "best interest standard." -The Department proposes ~~the addition of~~new N.J.A.C. 11:4-59A.1(e), which states that the ~~regulations~~rules do not create or imply a private cause of action ~~under~~pursuant to either the "best interest standard" ~~outlined set forth in~~at N.J.A.C. 11:4-59A.3 or ~~under~~pursuant to the standards governing the conduct of a fiduciary or a fiduciary relationship. -In addition, the Department proposes renumbering ~~at~~of N.J.A.C. 11:4-59A.1(c)~~2vi, vi, and vii as to N.J.A.C. 11:4-59A.1(c)2vii as~~ (c)3, 4, and 5, respectively, to consistently reflect the Model Regulations.

The Department proposes to ~~amend~~amend N.J.A.C. 11:4-59A.2 to include definitions of the following terms: cash compensation, consumer profile information, insurer, intermediary, material conflict of interest, non-cash compensation, non-guaranteed elements, producer, and SEC pursuant to the Model Regulation. -The definition of "recommendation" has been updated to reflect the national standard. -In addition, the Department proposes to delete the definition of "suitability information" as it has been replaced with "consumer information profile."

The Department proposes ~~amendments to~~to repeal and replace N.J.A.C. 11:4-59A.3, which sets forth duties of insurers and insurance producers in determining the suitability of an annuity to the consumer. -The Model Regulation reorganizes the rule, so this ~~proposal~~rulemaking ~~deletes the existing text of the entire rule and~~ replaces ~~the existing section it~~ with new language that is organized in a different format. -Proposed new language at N.J.A.C. 11:4-59A.3(a) provides the updated "best interest standard." -Proposed new language at subsections (b), (c), (d), and (e) provides how a producer must satisfy their obligation of care, disclosure, conflict of interest, and documentation to meet the updated standard. -Proposed new ~~language at~~ subsection (f) describes when the standard is applicable, and new subsection (g) describes scenarios in which the new standard does not apply. -Proposed new ~~language at~~ N.J.A.C. 11:4-59A.3(h) provides that an insurer must have a reasonable basis to make their recommendation based on the consumer's consumer information profile. -Proposed new N.J.A.C. 11:4-59A.3(i) requires that an insurer maintain a system of supervision and ensures ~~insurers~~insurers; and their producers are compliant. ~~The language at p~~ Proposed new N.J.A.C. 11:4-59A.3(j) sets forth how an insurer can contract for performance of a function pursuant to

~~under~~ subsection (i). Proposed new ~~S~~subsection (k) states that neither a producer nor an insurer may dissuade a consumer from truthfully responding to an insurer's request for conformation of consumer profile information, filing a complaint, or cooperating with the investigation of a complaint. ~~New language at~~ subsection (l) sets forth how other financial professionals, including broker-dealers, investment advisors, and investment advisor representatives, may make recommendations or sell annuities in compliance with comparable standards.

Lastly, the Department proposes several amendments ~~to~~ N.J.A.C. 11:4-59A.4, which provides the training requirements for an insurance producer who holds a life insurance line of authority and sells annuities in this State. This includes an amendment ~~to~~ N.J.A.C. 11:4-59A.4(e)6, which requires that annuity training courses include education on the appropriate standard of conduct. ~~The Department proposes an amendment to new~~ N.J.A.C. 11:4-59A.4(h), which permits an insurance producer who completed an annuity training course prior to the effective date of ~~these proposed amendments this rulemaking to~~; either complete a new ~~four~~4-hour training course covering the required topics, or a one-time one-hour course pertaining to appropriate sales practices, replacement, and disclosure requirements, within ~~six~~6 months of the effective date of ~~the rules this rulemaking~~. ~~The Department proposes new language at~~ N.J.A.C. 11:4-59A.4(l), which provides that satisfaction of the training requirements of any course or courses with substantially similar components shall be deemed to satisfy the training requirements.

Social Impact

The proposed amendments, repeal, and new rule will have a positive social impact. ~~These proposed amendments, repeal, and new rule amendments~~ update the standards and procedures for recommending annuity products to consumers to ensure their insurance and financial objectives are appropriately addressed and will ensure New Jersey's regulatory framework remains consistent with the updated national standard. ~~The proposed amendments, repeal, and new rule proposed amendments~~ will also continue to implement the intent of the Legislature, as set forth in the Act, to prevent the fraudulent and misleading marketing of annuity products by insurers, brokers, and agents; ensure that annuity products ultimately issued to consumers are suitable to their insurance and financial objectives; and enhance oversight of the sale of annuity products, including enforcement against violations through the Department.

Moreover, uniform standards will provide regulated entities subject to the rules with consistency and uniformity as to compliance with requirements that are consistent with the national standard reflected in the Model Regulation, thereby reducing the costs and administrative burdens related to complying with differing or possibly duplicative standards. Accordingly, any costs that may be imposed by the proposed amendments, repeal, and new rule ~~proposed new rules~~ are far outweighed by the benefits to be achieved.

Economic Impact

Insurance producers and agents, representatives, and members of fraternal benefit societies not required to be licensed as insurance producers and insurers, will be required to bear any costs associated with complying with the requirements in the proposed amendments, repeal, and new rule ~~proposed amendments~~, which are set forth in detail in the ~~notice of proposal~~ Summary above. ~~In general, insurance producers and insurers will continue to be required to obtain and determine suitability information from consumers, and determine the suitability of an insurance product to a particular consumer based on the suitability information. In addition, insurers or those with whom they have contracted to provide such supervision will be required to supervise their producers, and insurers and producers will continue to be required to maintain~~

applicable records. -Further, producers will be required to obtain requisite training, and insurers will be required to ensure that such training has in fact occurred. -Professional services required to comply with these rules include legal and financial services. -The Department believes that those parties required to provide and obtain information as set forth in the proposed amendments, repeal, and new rule ~~proposed new rules~~ currently possess the requisite expertise to comply with ~~these proposed requirements~~ the proposed amendments, repeal, and new rule.

As noted in the Summary above, the proposed amendments, repeal, and new rule ~~proposed requirements~~ track the national standard as adopted by the NAIC related to these areas. Moreover, these requirements further implement the requirements related to suitability for the sale of annuities and ensure supervision of insurance producers as required ~~at in~~ N.J.S.A. 17B:25-34 et seq. -The Department believes that by continuing to align with the national standard adopted by the NAIC, insurers and producers will be in a better position to obtain required information to determine suitability, provide and receive training, and monitor the sales of annuities to ensure compliance with such standards. -By further enhancing the implementation ~~at of~~ N.J.S.A. 17B:25-34 et seq., with respect to the suitability of annuities sold to consumers and better ensuring adequate supervision of such activities, enhanced protections will be afforded to consumers as contemplated by the Legislature in the Act. -Moreover, uniform standards will provide regulated entities subject to the rules with consistency and uniformity as to compliance with requirements that are consistent with the national standard reflected in the Model Regulation, thereby reducing the costs and administrative burdens related to complying with differing or possibly duplicative standards. -Accordingly, any costs that may be imposed by the proposed amendments, repeal, and new rule ~~proposed new rules~~ are far outweighed by the benefits to be achieved.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments, repeal, and new rule ~~proposed amendments~~ are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost due to the proposed amendments, repeal, and new rule ~~proposed amendments~~.

Agriculture Industry Impact

The proposed amendments, repeal, and new rule ~~proposed amendments~~ will not have any impact on the agricultural industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments, repeal, and new rule ~~proposed amendments~~ will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they will apply to New Jersey resident producers, New Jersey resident representatives, or members of a fraternal benefits society not required to be licensed as insurance producers, and New Jersey domestic insurers, as applicable. As set forth in the Economic Impact, the Department believes that any additional costs that may be imposed on regulated entities is far outweighed by the benefits to be achieved. -In addition, as previously noted, the requirements in the proposed amendments, repeal, and new rule ~~proposed amendments~~ ensure that New Jersey will continue to conform with the national standard as adopted by the NAIC. -No differentiation in compliance requirements is provided based on business size. -The requirements and the goals to be achieved by the Act, as noted in the Social Impact, do not vary based on business size.

Housing Affordability Impact Analysis

The proposed amendments, repeal, and new rule ~~proposed amendments~~ will not have an impact on housing affordability and are unlikely to evoke a change in the average costs associated with housing in this State in that the proposed amendments, repeal, and new rule ~~proposed amendments~~ relate to the suitability in annuity transactions and insurer supervision.

Smart Growth Development Impact Analysis

The proposed amendments, repeal, and new rule ~~proposed amendments~~ will not have an impact on smart growth in this State and there is an extreme unlikelihood that the proposed amendments, repeal, and new rule ~~proposed amendments~~ would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, ~~under pursuant to~~ the State Development and Redevelopment Plan in New Jersey, in that the proposed amendments, repeal, and new rule ~~proposed amendments~~ relate to the suitability in annuity transactions and insurer supervision.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments, repeal, and new rule ~~proposed amendments~~ will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendments, repeal, and new rule ~~proposed amendments~~ concern the suitability in annuity transactions and insurer supervision.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:4-59A.3.

Full text of the ~~proposal~~ proposed amendments and new rule follows (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.~~
~~3. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process;~~
~~4. Formal prepaid funeral contracts; and~~
~~5. Any transaction exempt under pursuant to N.J.S.A. 17B:25-38.~~
(d) (No change.)
(e) Nothing ~~herein~~ in this subchapter shall be construed to create or imply a private cause of action for a violation of this ~~regulation rules~~ subchapter or to subject a producer to civil liability ~~under~~ pursuant to the best interest standard of care outlined ~~at~~ in N.J.A.C. 11:4-59A.3 or ~~under~~ pursuant to standards governing the conduct of a fiduciary or a fiduciary relationship.

11:4-59A.2 Definitions

Words and terms as defined in 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 Sstate 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 Sstate 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”~~ “Recommendation” means advice provided by a producer, or an insurer where no producer is involved, to an individual consumer that results 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.**

~~“Replacement” means a transaction in which a new policy or contract 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 producer, that by reason of the transaction, an existing policy or contract has been or is to be:~~
~~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 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, which are intended to supplement and not replace the requirements for disclosure set forth in N.J.A.C. 11:4-59:~~

~~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;~~

~~2. —The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;~~

~~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. —In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including 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 consumer would benefit from product enhancements and improvements; and~~

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

~~(b) —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.~~

~~(c) —Except as permitted under (d) below, 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.~~

~~(d) —Neither an insurance producer, nor an insurer, shall have any obligation to a consumer under (a) or (c) above related to any annuity transaction if any of the following listed below in (d)1 through 4 exist, except that an insurer's issuance of an annuity shall be reasonable under 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 suitability 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 insurer or the insurance producer.~~

~~(c) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:~~

~~1. Make a record of any recommendation subject to (a) above;~~

~~2. Obtain a statement signed by the customer documenting a customer's refusal to provide suitability information, if any; and~~

~~3. Obtain a statement signed by the customer 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.~~

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

~~1. The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this subchapter and shall incorporate the requirements of this subchapter into relevant insurance producer training manuals;~~

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

~~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. The insurer shall maintain procedures for 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. 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 maintain reasonable procedures to detect recommendations that are not suitable. These may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, 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 suitability information after issuance or delivery of the annuity; and~~

~~6. The insurer shall annually provide a 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.~~

~~(g) Nothing in (f) above shall restrict an insurer from contracting for performance of a function (including maintenance of procedures) required under (f) 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 (g)1 below.~~

~~1. An insurer's supervision system under (f) above shall include supervision of contractual performance under that subsection, which shall include, but not be limited to, the following:~~

~~i. Monitoring and, as appropriate, conducting audits to assure 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.~~

~~(h) 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.~~

~~(i) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:~~

~~1. Truthfully responding to an insurer's request for confirmation of suitability information;~~

~~2. Filing a complaint; or~~

~~3. Cooperating with the investigation of a complaint.~~

~~(j) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this subchapter. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall be construed to limit the Commissioner's ability to enforce (including investigate) the provisions of this subchapter.~~

~~1. For this subsection to apply, an insurer shall:~~

~~i. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and~~

~~ii. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.]~~

(a) In recommending to a consumer the purchase of an annuity, an insurance producer shall act in the best interest of the consumer ~~under~~ 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 obligations regarding care, disclosure, conflict of interest, and documentation.

(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~~ subsection.

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 rule~~ 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 ~~S~~ State, including, but not limited to, any securities license, in order to fulfill the duties and obligations ~~set forth~~ contained in this ~~rule~~ subsection ~~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~~for Annuities Form, 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 annuities₂, fixed indexed annuities₂, variable annuities₂, life insurance₂, mutual funds₂, stocks and bonds₂, 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 riders₂, 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 shall₂ 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, 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, 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 iatn~~ (g)1, 2, 3, or ~~through (g)~~4 below apply, except that an insurer’s issuance of an annuity shall be reasonable ~~underpursuant 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. 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 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 in~~ (i) above shall restrict an insurer from contracting for performance of a function (including maintenance of procedures) required ~~pursuant to~~ under (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 (l)~~ this subsection to above apply, an insurer shall:

i. Monitor the relevant conduct of the financial professional seeking to rely on ~~subsection (l)~~ 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 ~~F~~ederal or ~~S~~tate 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 ~~(l)~~, such as the financial professional’s broker-dealer or investment adviser registered ~~under~~ pursuant to ~~F~~ederal or ~~S~~tate 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 ~~F~~ederal or ~~S~~tate securities laws or a registered representative of a broker-dealer;

ii. —An investment adviser registered ~~under~~ pursuant to ~~F~~ederal or ~~S~~tate securities laws or an investment adviser representative associated with the ~~F~~ederal or ~~S~~tate 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)-(d) (No change.)

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

1.-~~56~~.—(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)~~ insert effective date of amended regulation ~~September 3, 2024~~, shall, ~~within by~~ (six (6) months after ~~insert effective date of amended regulation~~ September 3, 2024 ~~the effective date of this rulemaking)~~, complete either:

1. —A new four ~~(4)~~ -credit training course approved by the Department after ~~September 3, 2024~~ (the effective date of this rulemaking) ~~insert effective date of amended regulation~~; or

2. —An additional one-time one ~~(1)~~ -credit training course approved by the Department and provided by an approved education provider on appropriate sales practices, replacement, and disclosure requirements ~~under~~ pursuant to this ~~amended regulation~~ rule section.

~~Recodify existing [(h)]-(j) as (i)-(k) (No change in text.) —Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with N.J.A.C. 11:17-3.~~

~~[(i)] (j) —Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with N.J.A.C. 11:17-3.~~

~~[(j)] (k) —The satisfaction of the training requirements of another state that are substantially similar to the provisions of this section shall be deemed to satisfy the training requirements of this section in this State.~~

(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.

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

56 NJR 9(1)
September 3, 2024
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