

2009 DRAFTING REQUEST

Bill

Received: **12/03/2009**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Insurance 7-7911**

By/Representing: **Jennifer Stegall**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - other insurance**

Extra Copies:

Submit via email: **YES**

Requester's email: **Jennifer.Stegall@wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Suitability of annuities

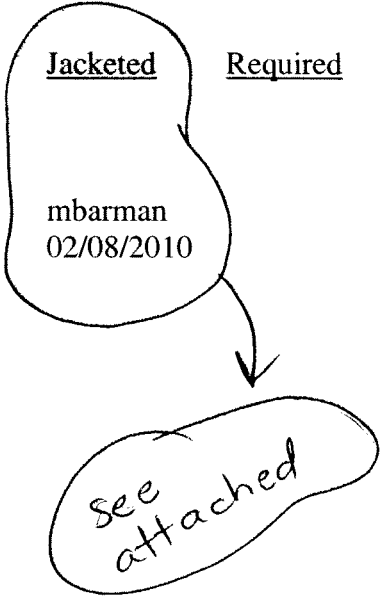
Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 12/08/2009	csicilia 12/15/2009		_____			
/P1			jfrantze 12/16/2009	_____	mbarman 12/16/2009		
/P2	pkahler 01/07/2010	csicilia 01/11/2010	rschluet 01/11/2010	_____	cduerst 01/11/2010		
/1	pkahler	csicilia	mduchek	_____	lparisi		

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	02/01/2010	02/02/2010	02/02/2010	_____	02/02/2010		
/2	pkahler 02/05/2010	csicilia 02/05/2010	jfrantze 02/05/2010	_____	mbarman 02/05/2010	mbarman 02/08/2010	



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10 2/5
Rs 2/5
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/?	pkahler						
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Handwritten notes:
P1 g's 12/11/09
12/12
[Signature]
12/12/09
[Signature]
<END>

FE Sent For:

Kahler, Pam

From: Stegall, Jennifer L - OCI [Jennifer.Stegall@wisconsin.gov]
Sent: Thursday, December 03, 2009 12:05 PM
To: Kahler, Pam
Cc: Shaul, Kimberly A - OCI; Guidry, Jim R - OCI; Frings, Roger - OCI; Mallow, Eileen K - OCI; Nepple, Fred - OCI; Ruch, Guenther H - OCI
Subject: Annuity Suitability Draft
Attachments: Annuity Suitability7clean.doc

Hi Pam,

Per my voicemail, attached is the NAIC annuity suitability language. The Commissioner would like this draft NAIC model drafted as a bill. The Commissioner is hoping to have a draft in early January if possible. Please let me know your thoughts on the timeline.

Thanks!

Jennifer Stegall
Policy Advisor
Office of the Commissioner of Insurance
608-267-7911

Kahler, Pam

From: Nepple, Fred - OCI [Fred.Nepple@wisconsin.gov]
Sent: Friday, December 04, 2009 10:30 AM
To: Kahler, Pam
Cc: Stegall, Jennifer L - OCI
Subject: RE: Annuity Suitability Draft

Pam

As you know this Model is a revision to the Model that was the basis for s. 628.347. Please leave s. 628.347 (6) (a) unchanged and address the "mitigation" of penalties included in the new Model in the manner provided in (6) (b) i.e. the commissioner may by rule provide for reduction of penalties under the circumstances as described in the penalty section of the new Model. Also please include in the intro to the exemption section "unless otherwise prescribed by rule."

I am out of the office until Weds but available by email or cell 608 347 1343 if its is helpful to talk to me in that period.

Let me know if you would like a track change showing the changes from the current Model to this new Model.

As always we appreciate your work on this.

From: Stegall, Jennifer L - OCI
Sent: Thursday, December 03, 2009 12:05 PM
To: Kahler, Pam - LEGIS
Cc: Shaul, Kimberly A - OCI; Guidry, Jim R - OCI; Frings, Roger - OCI; Mallow, Eileen K - OCI; Nepple, Fred - OCI; Ruch, Guenther H - OCI
Subject: Annuity Suitability Draft

Hi Pam,

Per my voicemail, attached is the NAIC annuity suitability language. The Commissioner would like this draft NAIC model drafted as a bill. The Commissioner is hoping to have a draft in early January if possible. Please let me know your thoughts on the timeline.

Thanks!

Jennifer Stegall
Policy Advisor
Office of the Commissioner of Insurance
608-267-7911

12/04/2009

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Draft: 12/1/09

Adopted by the Suitability of Annuity Sales (A) Working Group, 12/1/09

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

Table of Contents

Section 1.	Purpose
Section 2.	Scope
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Section 7.	Insurance Producer Training
Section 8.	Compliance Mitigation; Penalties
Section 9.	[Optional] Recordkeeping
Section 10.	Effective Date

Section 1. Purpose

- A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.

Section 2. Scope

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

Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

Section 4. Exemptions *628.347(B)*

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

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- B. Contracts used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

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- (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
- (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;
- (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- (5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- (6) Formal prepaid funeral contracts.

Section 5. Definitions

mod?

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

new?

B. "Continuing education credit" or "CE credit" means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].

C. "Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].

?

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

new?

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

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

mod?

G. "Recommendation" means advice provided by an insurance 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.

new

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

Drafting Note: The definition of "replacement" above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for "replacement," the State should either insert the text of that

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definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

- I. “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:
 - (1) Age;
 - (2) Annual income;
 - (3) Financial situation and needs, including the financial resources used for the funding of the annuity;
 - (4) Financial experience;
 - (5) Financial objectives;
 - (6) Intended use of the annuity;
 - (7) Financial time horizon;
 - (8) Existing assets, including investment and life insurance holdings;
 - (9) Liquidity needs;
 - (10) Liquid net worth;
 - (11) Risk tolerance; and
 - (12) Tax status.

Section 6. 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:
 - (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;

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

- (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

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- (4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
- (a) 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;
 - (b) The consumer would benefit from product enhancements and improvements; and
 - (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(b) 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.

(bm) C. Except as permitted under subsection D, 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.

(c) D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:

- (a) No recommendation is made;
- (b) A recommendation was made and was later found to have prepared based on inaccurate information provided by the consumer;
- (c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
- (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

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

- new
- (1) Make a record of any recommendation subject to section 6A of this regulation;
 - (2) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
 - (3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(?) F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

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- (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;
 - (b) 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 section 7 of this regulation;
 - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;
 - (d) The insurer shall maintain reasonable procedures to confirm consumer suitability information to the extent reasonably appropriate to identify, and to deter, insurance producer submission of inaccurate information. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity, or both;
 - (e) 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. An insurer's procedures may apply a system of selection criteria for the purpose of identifying selected transactions for additional review. An insurer's procedures 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;
 - (f) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring; and
 - (g) 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.
- (2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function required under this subsection F. An insurer is subject to, and is required to comply with this subsection F regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
- (b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
- (i) Monitoring and, as appropriate, audits to assure that the contracted function is properly performed;
 - (ii) Examination of a function under paragraph (1)(e); and
 - (iii) 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.

(3) (f) 2,
(3)

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.

new G. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

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- (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.

- (4) H. (1) Compliance with FINRA rules pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

Drafting Note: This safe harbor applies to FINRA broker-dealer sales of fixed annuities as well as variable annuities if the suitability and supervision is similar to the standards applied to variable annuity transactions. Non-compliance with FINRA rules means that the broker-dealer transaction is subject to compliance with this regulation with no safe harbor.

- (2) An insurer shall:
 - (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
 - (b) 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.

CR (4m)
Section 7.

Insurance Producer Training

- A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
 - (b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
- (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
- (3) The training required under this subsection shall include information on the following topics:
 - (a) The types of annuities and various classifications of annuities;
 - (b) Identification of the parties to an annuity;
 - (c) How fixed, variable and indexed annuity contract provisions affect consumers;
 - (d) The application of income taxation of qualified and non-qualified annuities;
 - (e) The primary uses of annuities; and
 - (f) Appropriate sales practices, replacement and disclosure requirements.

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- (4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- (5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].
- (6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].
- (7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].
- (8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.
- (9) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

RC (6)
(5) + (6)

Section 8. Compliance Mitigation; Penalties

- A. An insurer is ultimately responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the insurer is responsible for taking appropriate corrective action, including, but not limited to, canceling a transaction that is not suitable, and is subject to sanctions and penalties.
- B. (5) The commissioner may order:
 - (1) (a) 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 regulation; and
 - (2) (b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation.
- C. (6)(b) Any applicable penalty under [insert statutory citation] for a violation of section 6A, B, D or E of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered and the violation was not part of a pattern or practice.
- D. Any applicable penalty under [insert statutory citation] for an insurer's violation of section 6C of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if:
 - (1) Corrective action for the affected consumer(s) is taken promptly after a violation is discovered; and
 - (2) The insurer reviewed the recommendation and approved issuance of the annuity after consideration of the customer's suitability information as required under section 6F(1)(e) of this

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regulation. The review and approval may be made applying selection criteria as permitted under section 6F(1)(e) of this regulation.

Drafting Note: A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, "shall" should be substituted for "may" in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State's statute that authorizes the commissioner to impose penalties and fines.

Section 9. ⁽⁷⁾ **[Optional] Recordkeeping**

- A. Insurers and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States this time period may be five (5) years.

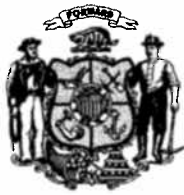
- B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

Section 10. Effective Date

The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on [insert date], whichever is later.

w:\Drafts\Model Laws, Regulations & Guidelines\Model 275\Annuity Suitability7clean.doc



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON
(in 12-8)

STW
X-refs ✓

gen cat

1 AN ACT *gen cat*; relating to: suitability of annuity contracts and granting
2 rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 601.41 (4) (a) 1. of the statutes is amended to read:
4 601.41 (4) (a) 1. Remedial measures or restitution under s. 628.347 (5) (bm).

History: 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1983 a. 358 s. 14; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 247; 1989 a. 187 s. 29; 1989 a. 201, 336; 1991 a. 39; 1993 a. 16; 1995 a. 201; 1997 a. 27, 51, 252; 1999 a. 150 s. 672; 2001 a. 16, 65, 109; 2003 a. 261, 302; 2005 a. 74, 249; 2007 a. 170; 2009 a. 28.

5 SECTION 2. 628.347 (title) of the statutes is amended to read:
6 **628.347 (title) Suitability of in annuity sales to consumers transactions.**

History: 2003 a. 261; 2007 a. 168.

7 SECTION 3. 628.347 (1) (a) of the statutes is amended to read:

1 628.347 (1) (a) "Annuity" means a fixed or variable annuity that is an insurance
 2 product that is individually solicited, whether the product is classified as an
 3 individual or group annuity. ✓

History: 2003 a. 261; 2007 a. 168.

4 **SECTION 4.** 628.347 (1) (b) of the statutes is amended to read:

5 628.347 (1) (b) "Recommendation" means advice provided by an insurance
 6 intermediary, or an insurer if no intermediary is involved, to an individual consumer
 7 that results in the purchase ~~or~~, exchange, or replacement of an annuity in accordance
 8 with that advice.

History: 2003 a. 261; 2007 a. 168.

9 **SECTION 5.** 628.347 (1) (c) of the statutes is created to read:

10 628.347 (1) (c) "Regulatory authority" means the Financial Industry
 11 Regulatory Authority or a succeeding agency.

12 **SECTION 6.** 628.347 (1) (d) of the statutes is created to read:

13 628.347 (1) (d) "Replacement" means a transaction in which a new policy or
 14 contract is to be purchased and it is known, or should be known to the proposing
 15 insurance intermediary, or to the proposing insurer if no intermediary is involved,
 16 that by reason of the transaction an existing policy or contract has been or is to be
 17 any of the following:

- 18 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the
 19 replacing insurer, or otherwise terminated.
- 20 2. Converted to reduced paid-up insurance, continued as extended term
 21 insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other
 22 policy values.

Insert 2-17

otherwise

1 3. Amended so as to effect either a reduction in benefits or a reduction in the
2 term for which coverage would otherwise remain in force or for which benefits would
3 be paid.

 ****NOTE: Did I interpret this correctly? The proposed language was not clear about
the two alternatives following "either."

4 4. Reissued with a reduction in cash value.

5 5. Used in a financed purchase.

6 **SECTION 7.** 628.347 (1) (e) of the statutes is created to read:

7 628.347 (1) (e) "Suitability information" means information that is reasonably
8 appropriate to determine the suitability of a recommendation, including all of the
9 following:

10 1. Age.

11 2. Annual income.

12 3. Financial situation and needs, including the financial resources used for the
13 funding of the annuity.

14 4. Financial experience.

15 5. Financial objectives.

16 6. Intended use of the annuity.

17 7. Financial time horizon.

18 8. Existing assets, including investment and life insurance holdings.

19 9. Liquidity needs.

20 10. Liquid net worth.

21 11. Risk tolerance.

22 12. Tax status.

23 **SECTION 8.** 628.347 (2) (title) of the statutes is amended to read:

1 628.347 (2) (title) DUTIES OF INSURERS AND INSURANCE INTERMEDIARIES WITH
2 REGARD TO RECOMMENDATIONS AND ISSUANCE OF ANNUITIES.

3 History: 2003 a. 261; 2007 a. 168.

3 **SECTION 9.** 628.347 (2) (a) of the statutes is renumbered 628.347 (2) (a) (intro.)

4 and amended to read: (intro.)

5 628.347 (2) (a) ~~Except as provided in par. (e), an insurance intermediary, or~~
6 ~~insurer if no intermediary is involved, may not recommend~~ In recommending to a
7 consumer the purchase or exchange of an annuity ~~if the recommendation that results~~
8 ~~in an another insurance transaction or series of insurance transactions unless the,~~
9 an insurance intermediary, or insurer has if no intermediary is involved, ~~must~~ have
10 reasonable grounds to believe that the recommendation is suitable for the consumer
11 on the basis of facts disclosed by the consumer as to his or her investments, other
12 insurance products, and financial situation and needs, including the consumer's
13 suitability information, and that all of the following are true:

shall have

Insert 4-13

14 History: 2003 a. 261; 2007 a. 168.

14 **SECTION 10.** 628.347 (2) (a) 1. of the statutes is created to read:

15 628.347 (2) (a) 1. The consumer has been reasonably informed of various
16 features of the annuity, such as the potential surrender period and surrender charge,
17 potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the
18 annuity, mortality and expense fees, investment advisory fees, potential charges for
19 and features of riders, limitations on interest returns, insurance and investment
20 components, and market risk.

21 **SECTION 11.** 628.347 (2) (a) 2. of the statutes is created to read:

22 628.347 (2) (a) 2. The consumer would benefit from certain features of the
23 annuity, such as tax-deferred growth, annuitization, or death or living benefit.

24 **SECTION 12.** 628.347 (2) (a) 3. of the statutes is created to read:

1 628.347 (2) (a) 3. The particular annuity as a whole, the underlying
2 subaccounts to which funds are allocated at the time of purchase or exchange of the
3 annuity, and riders and similar product enhancements, if any, are suitable, and in
4 the case of an exchange or replacement, the transaction as a whole is suitable, for the
5 particular consumer based on his or her suitability information.

 ***NOTE: I replaced the parentheses in the proposed text with commas. Although
the language that was in parentheses includes "replacement," the introductory language
("In recommending to a consumer the purchase or exchange of an annuity ...") does not.

6 **SECTION 13.** 628.347 (2) (a) 4. of the statutes is created to read:

7 628.347 (2) (a) 4. In the case of an exchange or replacement of an annuity, the
8 exchange or replacement is suitable, including taking into consideration all of the
9 following: *even after*

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

14 b. Whether the consumer would benefit from product enhancements and
15 improvements.

16 c. Whether the consumer has had another annuity exchange or replacement
17 and, in particular, an exchange or replacement within the preceding 36 months.

 ***NOTE: Once again, this paragraph mentions "replacement" while the
introductory language does not. Should the introductory language refer to the purchase,
exchange, or *replacement* of an annuity, or is replacement a *resulting insurance*
transaction or series of insurance transactions?

18 **SECTION 14.** 628.347 (2) (b) (intro.) of the statutes is renumbered 628.347 (2)
19 (b) and amended to read:

20 628.347 (2) (b) Before ~~making a recommendation described in par. (a) the~~
21 execution of a purchase, exchange, or replacement of an annuity resulting from a

1 recommendation, an insurance intermediary, or insurer if no intermediary is
 2 involved, shall make reasonable efforts to obtain the consumer's suitability
 3 information concerning all of the following:

History: 2003 a. 261; 2007 a. 168.

4 **SECTION 15.** 628.347 (2) (b) 1. of the statutes is repealed.

5 **SECTION 16.** 628.347 (2) (b) 2. of the statutes is repealed.

6 **SECTION 17.** 628.347 (2) (b) 3. of the statutes is repealed.

7 **SECTION 18.** 628.347 (2) (b) 4. of the statutes is repealed.

8 **SECTION 19.** 628.347 (2) (b[^]m) of the statutes is created to read:

9 628.347 (2) (b[^]m) Except as permitted under par. (c), an insurer may not issue
 10 ^{that is} an annuity recommended to a consumer unless ^{insert 6-10} there is ^{or it} a reasonable ² basis to believe
 11 that the annuity is suitable based on the consumer's suitability information.

12 **SECTION 20.** 628.347 (2) (c) of the statutes is repealed and recreated to read:

13 628.347 (2) (c) 1. ^{subject to} ~~Except as provided in~~ subd. 2., neither an insurance
 14 intermediary, nor an insurer, has any obligation to a consumer ^{insert 6-14} under par. (a) or (b)
 15 related to an annuity transaction if any of the following applies:

16 a. Neither the insurance intermediary nor the insurer made a
17 recommendation.

18 b. The insurance intermediary or insurer made a recommendation but the
19 recommendation was later found to have been prepared based on inaccurate
20 information provided by the consumer.

21 c. The consumer refuses to provide relevant suitability information and the
22 annuity transaction is not recommended.

****NOTE: What does it mean that "the annuity transaction is not recommended"?
Does this mean that the intermediary or insurer ~~does~~ not recommend the transaction?

Insert 6-3

Insert 6-15

advise against it
(advise against it)
do not recommend it
or do not recommend it

did

1 d. The consumer decides to enter into an annuity transaction that is not based
2 on a recommendation of the insurer or the insurance intermediary.

3 **SECTION 21.** 628.347 (2) (d) of the statutes is renumbered 628.347 (2) (c) 2. and
4 amended to read:

5 628.347 (2) (c) 2. ~~Any recommendation of an insurer or insurance intermediary~~
6 ~~that, under par. (e), is not subject to the obligation under par. (a)~~ An insurer's
7 issuance of an annuity under circumstances specified in subd. 1. ^{a. to do} shall be reasonable
8 under all circumstances actually known to the insurer ~~or insurance intermediary~~ at
9 the time the ~~recommendation is made~~ annuity is issued.

History: 2003 a. 261; 2007 a. 168.

10 **SECTION 22.** 628.347 (2) (dm) of the statutes is created to read:

11 628.347 (2) (dm) An insurance intermediary, or insurer if no intermediary is
12 involved, shall at the time of sale do all of the following:

- 13 1. Make a record of any recommendation subject to par. (a).
- 14 2. Obtain a customer-signed statement documenting a customer's refusal, if
15 any, to provide suitability information.
- 16 3. If a customer decides to enter into an annuity transaction that is not based
17 on the insurance intermediary's or insurer's recommendation, obtain a
18 customer-signed statement acknowledging that the annuity transaction is not
19 recommended by the intermediary or insurer.

****NOTE: These subdivisions refer to a "customer" instead of a "consumer." Is this okay or should the word be "consumer"?

****NOTE: Is the customer/consumer entering into a transaction without a recommendation, or is the customer/consumer entering into a transaction that is not recommended, or either one?

20 **SECTION 23.** 628.347 (3) of the statutes is repealed and recreated to read:

1 628.347 (3) INSURER'S SUPERVISORY RESPONSIBILITY. (a) An insurer shall
2 establish a supervision system that is reasonably designed to achieve the insurer's
3 and its insurance intermediaries' compliance with this section. Under the system,
4 the insurer shall do at least all of the following:

5 1. Maintain reasonable procedures to inform its insurance intermediaries of
6 the requirements of this section and incorporate the requirements of this section into
7 relevant insurance intermediary training manuals.

8 2. Establish standards for insurance intermediary product training and
9 maintain reasonable procedures to require its insurance intermediaries to comply
10 with the requirements of sub. (4m).[✓]

11 3. Provide product-specific training and training materials that explain all
12 material features of its annuity products to its insurance intermediaries.

13 4. Maintain reasonable procedures to confirm consumer suitability
14 information to the extent reasonably appropriate to identify, and to deter, insurance
15 intermediary submission of inaccurate information. Nothing in this subdivision
16 prevents an insurer from complying with this subdivision by applying sampling
17 procedures or by confirming suitability information after issuance or delivery of the
18 annuity, or both.

19 5. Maintain procedures for review of each recommendation before issuance of
20 an annuity that are designed to ensure that there is a reasonable basis to determine
21 that a recommendation is suitable. An insurer's procedures may apply a system of
22 selection criteria for the purpose of identifying selected transactions for additional
23 review. An insurer's procedures may be accomplished electronically or through other
24 means, including physical review. An electronic or other system may be designed to

1 require additional review only of those transactions identified for additional review
2 by the selection criteria.

3 6. Maintain reasonable procedures to detect recommendations that are not
4 suitable, which may include systematic customer surveys, interviews, confirmation
5 letters, and programs of internal monitoring.

6 7. Annually provide a report to senior management, including to the senior
7 manager responsible for audit functions, that details a review, with appropriate
8 testing, that is reasonably designed to determine the effectiveness of the supervision
9 system, the exceptions found, and corrective action taken or recommended, if any.

10 (b) 1. Nothing in this subsection restricts an insurer from contracting for the
11 performance of a function required under this subsection. An insurer is subject to,
12 and required to comply with, this subsection regardless of whether the insurer
13 contracts for the performance of a function and regardless of the insurer's compliance
14 with subd. 2.

15 2. An insurer's supervision system under par. (a) shall include supervision of
16 any contractual performance under this subsection, including all of the following:

17 a. Monitoring and, as appropriate, audits to ensure that the contracted
18 function is properly performed.

19 b. Examination of a function under par. (a) 5.

20 c. Annually obtaining a certification from a senior manager who has
21 responsibility for the contracted function that the manager has a reasonable basis
22 to represent, and does represent, that the function is properly performed.

23 (c) An insurer is not required to include in its system of supervision an
24 insurance intermediary's recommendations to consumers of products other than the
25 annuities offered by the insurer.

1 **SECTION 24.** 628.347 (3m) of the statutes is created to read:

2 628.347 **(3m)** PROHIBITED ACTS OF INTERMEDIARY. An insurance intermediary
3 may not dissuade, or attempt to dissuade, a consumer from doing any of the
4 following:

5 (a) Truthfully responding to an insurer's request for confirmation of suitability
6 information.

7 (b) Filing a complaint.

8 (c) Cooperating with the investigation of a complaint.

9 **SECTION 25.** 628.347 (4) (title) of the statutes is repealed and recreated to read:
10 628.347 **(4)** (title) REGULATORY AUTHORITY RULES.

11 **SECTION 26.** 628.347 (4) of the statutes is renumbered 628.347 (4) (a) and
12 amended to read:

13 628.347 **(4)** (a) Compliance with the ~~National Association of Securities Dealers~~
14 ~~Conduct Rules~~ regulatory authority rules pertaining to suitability and supervision
15 of annuity transactions satisfies the requirements under sub. ~~(2)~~ for the
16 ~~recommendation of variable annuities~~ this section. Nothing in this subsection
17 paragraph, however, limits the commissioner's ability to enforce this section.

18 History: 2003 a. 261; 2007 a. 168.

18 **SECTION 27.** 628.347 (4) (b) of the statutes is created to read:

19 628.347 **(4)** (b) An insurer shall do all of the following:

20 1. Monitor the regulatory authority member broker-dealer using information
21 collected in the normal course of an insurer's business.

22 2. Provide to the regulatory authority member broker-dealer information and
23 reports that are reasonably appropriate to assist the regulatory authority member
24 broker-dealer to maintain its supervision system.

Insert 11-1
and what does it do
****NOTE: Who or what is the regulatory authority (or FINRA) member broker-dealer?

1 **SECTION 28.** 628.347 (4m) of the statutes is created to read:

2 **628.347 (4m) INSURANCE INTERMEDIARY TRAINING.** (a) An insurance
3 intermediary may not solicit the sale of an annuity product unless the insurance
4 intermediary has adequate knowledge of the product to recommend the annuity and
5 the insurance intermediary is in compliance with the insurer's standards for product
6 training. An insurance intermediary may rely on insurer-provided product-specific
7 training standards and materials to comply with this paragraph.

8 (b) 1. a. An insurance intermediary who engages in the sale of annuity products
9 shall complete a one-time 4-credit training course approved by the commissioner
10 and provided by an education provider approved by the commissioner.

11 b. Insurance intermediaries who hold a life insurance line of authority on the
12 effective date of this subd. 1. b. [LRB inserts date], and who desire to sell annuities
13 must complete the requirements of this paragraph within 6 months after the
14 effective date of this subd. 1. b. [LRB inserts date]. Individuals who obtain a life
15 insurance line of authority on or after the effective date of this subd. 1. b. [LRB
16 inserts date], may not engage in the sale of annuities until they have completed the
17 annuity training course required under this paragraph.

18 2. The minimum length of the training required under this paragraph shall be
19 sufficient to qualify for at least 4 continuing education credits, but may be longer.

20 3. The training required under this paragraph shall include information on all
21 of the following topics:

- 22 a. The types of annuities and various classifications of annuities.
- 23 b. Identification of the parties to an annuity.

1 c. How fixed, variable, and indexed annuity contract provisions affect
2 consumers.

3 d. The application of income taxation of qualified and non-qualified annuities.

4 e. The primary uses of annuities.

5 f. Appropriate sales practices and replacement and disclosure requirements.

****NOTE: Did I interpret the proposed language correctly, or should it be
"appropriate sales practices, replacement, and disclosure requirements"?

6

4. Providers of annuity training courses intended to comply with this paragraph shall cover all

7 of the topics listed under subd. 3. and may not present any marketing information
8 or provide training on sales techniques or provide specific information about a
9 particular insurer's products. Additional topics may be offered in conjunction with
10 and in addition to those listed under subd. 3.

****NOTE: I assumed the list of topics under subd. 3. was what was meant by
"prescribed outline" and "required outline." Is that correct?

11 5. A provider of an annuity training course intended to comply with this
12 paragraph shall register as a continuing education provider in this state and comply
13 with the rules and guidelines applicable to insurance intermediary continuing
14 education courses as set forth in [insert reference to State law or regulations
15 governing intermediary continuing education course approval].

****NOTE: Can you provide me with the proper reference?

16 6. Annuity training courses may be conducted and completed by classroom or
17 self-study methods in accordance with [insert reference to State law or regulations
18 governing intermediary continuing education course approval].

****NOTE: Can you provide me with the proper reference?

19 7. Providers of annuity training shall comply with the reporting requirements
20 and shall issue certificates of completion in accordance with [insert reference to State
21 law or regulations governing to intermediary continuing education course approval].

****NOTE: Can you provide me with the proper reference?

1
2
3

8. Satisfaction of the training requirements of another state that are substantially similar to the provisions of this paragraph satisfy^{ies} the training requirements of this paragraph in this state. requirements

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10

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

11
12

SECTION 29. 628.347 (5) (title) of the statutes is amended to read:
628.347 (5) (title) ~~REMEDIAL COMPLIANCE; REMEDIAL~~ MEASURES.

History: 2003 a. 261; 2007 a. 168.

13

SECTION 30. 628.347 (5) of the statutes is renumbered 628.347 (5) (bm).

****NOTE: Section 628.347 (5) (a) and (b) in current law are included in the proposed language, but s. 628.347 (5) (c) is not. However, I did not repeal s. 628.347 (5) (c). Do you want it repealed?

14

SECTION 31. 628.347 (5) (am) of the statutes is created to read:

15
16
17
18
19

628.347 (5) (am) An insurer is ultimately responsible for compliance with this section. If a violation occurs, either because of the action or inaction of the insurer or its insurance intermediary, the insurer is responsible for taking appropriate corrective action, including canceling a transaction that is not suitable, and is subject to sanctions and penalties.

20

SECTION 32. 628.347 (6) (b) of the statutes is amended to read:

21
22

628.347 (6) (b) A The commissioner may by rule provide for the reduction or elimination of a penalty under par. (a) for a violation of sub. (2) (a), (b), (c), or (d) (dm),

striking
related to
LPS: add struck spaces before and after

1 including a forfeiture, ~~may be reduced or eliminated to the extent provided by rule~~
2 ~~of the commissioner~~ if corrective action is taken for the consumer promptly after the
3 violation is discovered and the violation is not part of a pattern or practice.

4 History: 2003 a. 261; 2007 a. 168.

SECTION 33. 628.347 (6) (c) of the statutes is renumbered 628.347 (6) (c) (intro.)

5 and amended to read: (intro.)

6 **628.347 (6) (c)** ~~The commissioner may promulgate rules related to by rule~~
7 provide for the reduction or elimination of penalties for violations of this section on
8 the basis of prompt action taken to correct any harm caused to consumers by the
9 violations. a penalty under par. (a) for a violation of sub. (2) (bm) if all of the following
10 apply:

11 History: 2003 a. 261; 2007 a. 168.

SECTION 34. 628.347 (6) (c) 1. of the statutes is created to read:

12 628.347 (6) (c) 1. Corrective action for any affected consumer is taken promptly
13 after a violation is discovered.

14 **SECTION 35.** 628.347 (6) (c) 2. of the statutes is created to read:

15 628.347 (6) (c) 2. The insurer reviewed the recommendation and approved
16 issuance of the annuity after consideration of the customer's suitability information
17 as required under sub. (3) (a) 5. The review and approval may be made by applying
18 selection criteria as permitted under sub. (3) (a) 5.

19 **SECTION 36.** 628.347 (7) of the statutes is renumbered 628.347 (7) (a).

20 **SECTION 37.** 628.347 (7) (b) of the statutes is created to read:

21 628.347 (7) (b) Records that are required to be maintained under this section
22 may be maintained in paper, photographic, microprocess, magnetic, or electronic
23 media or by any process that accurately reproduces the actual document.

24 **SECTION 38.** 628.347 (8) (intro.) of the statutes is amended to read:

81-14-18

Kahler, Pam

From: Stegall, Jennifer L - OCI [Jennifer.Stegall@wisconsin.gov]
Sent: Monday, December 28, 2009 12:16 PM
To: Kahler, Pam
Subject: FW: Draft review: LRB 09-3938/P1 Topic: Suitability of annuities
Attachments: LRB-3938_P1.pdf; 12-17 draft approved by A comm with two WI amend.doc

Hi Pam,

I highlighted language in Section 6 F (2) (b) ii that is re-stated from the 12-1. I wanted to point that out since there wasn't any track change marks indicating new language there.

Thank you!
-Jennifer

From: Stegall, Jennifer L - OCI
Sent: Monday, December 21, 2009 4:12 PM
To: Kahler, Pam - LEGIS
Cc: Shaul, Kimberly A - OCI; Nepple, Fred - OCI
Subject: FW: Draft review: LRB 09-3938/P1 Topic: Suitability of annuities

Hi Pam,

The NAIC A Committee made changes to the 12-1 annuity suitability draft I sent a few weeks ago. Attached is a tracked change version dated 12-17 which details the modifications. Please update the attached WI bill draft to reflect changes in the 12-17 NAIC draft.

The Commissioner wants to have a WI Annuity Committee discussion on the bill draft in mid January. Anything you can do to expedite the changes is very appreciated.

Thank you and Merry Christmas!

-Jennifer

-
From: Barman, Mike [mailto:Mike.Barman@legis.wisconsin.gov]
Sent: Wednesday, December 16, 2009 2:30 PM
To: Stegall, Jennifer L - OCI
Subject: Draft review: LRB 09-3938/P1 Topic: Suitability of annuities

Following is the PDF version of draft LRB 09-3938/P1.

THIS VERSION IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY

Draft: 12/17/09

Underlining and overstrikes show the changes from the Dec. 1 draft. This version of the revisions is for informational purposes only.

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**SUITABILITY IN ANNUITY TRANSACTIONS
MODEL REGULATION**

Table of Contents

- Section 1. Purpose
- Section 2. Scope
- Section 3. Authority
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- Section 5. Definitions
- Section 6. Duties of Insurers and Insurance Producers
- Section 7. Insurance Producer Training
- Section 8. Compliance Mitigation; Penalties
- Section 9. [Optional] Recordkeeping
- Section 10. Effective Date

Section 1. Purpose

- A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in ~~transactions~~ involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Deleted: a

not in draft

Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.

Section 2. Scope

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

Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

Section 4. Exemptions

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

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- B. Contracts used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

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- (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
- (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;
- (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- (5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- (6) Formal prepaid funeral contracts.

Section 5. Definitions

- A. "Annuity" means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
- B. "Continuing education credit" or "CE credit" means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].
- C. "Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].
- D. "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.
- E. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- F. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
- G. "Recommendation" means advice provided by an insurance 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.
- H. "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) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
 - (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 - (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
 - (4) Reissued with any reduction in cash value; or
 - (5) Used in a financed purchase.

Drafting Note: The definition of "replacement" above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for "replacement," the State should either insert the text of that

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definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

- I. “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:
 - (1) Age;
 - (2) Annual income;
 - (3) Financial situation and needs, including the financial resources used for the funding of the annuity;
 - (4) Financial experience;
 - (5) Financial objectives;
 - (6) Intended use of the annuity;
 - (7) Financial time horizon;
 - (8) Existing assets, including investment and life insurance holdings;
 - (9) Liquidity needs;
 - (10) Liquid net worth;
 - (11) Risk tolerance; and
 - (12) Tax status.

Section 6. 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:
 - (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;

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

- (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

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- (4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
- (a) 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;
 - (b) The consumer would benefit from product enhancements and improvements; and
 - (c) 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 subsection D, 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. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:
- (a) No recommendation is made;
 - (b) A recommendation was made and was later found to have been prepared based on inaccurate material information provided by the consumer; *added already*
 - (c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
 - (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.
- (2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.
- E. 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 section 6A of this regulation;
 - (2) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
 - (3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.
- F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:
- (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

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- (b) 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 section 7 of this regulation;
 - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;
 - (d) The insurer shall maintain reasonable procedures to confirm consumer suitability information to the extent reasonably appropriate to identify, and to deter, insurance producer submission of inaccurate information. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity, or both;
 - (e) 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. An insurer's procedures may apply a system of selection criteria for the purpose of identifying selected transactions for additional review. An insurer's procedures 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;
 - (f) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
 - (g) 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.
- (2)
- (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
 - (b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
 - (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Reasonable procedures applied to a contracted function under paragraph (1) (d) that are designed to address any conflict of interest.
 - (iii) 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.
- (3) 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.

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- (b) 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 section 7 of this regulation;
 - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;
 - (d) The insurer shall maintain reasonable procedures to confirm consumer suitability information to the extent reasonably appropriate to identify, and to deter, insurance producer submission of inaccurate information. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity, or both;
 - (e) 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. An insurer's procedures may apply a system of selection criteria for the purpose of identifying selected transactions for additional review. An insurer's procedures 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;
 - (f) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
 - (g) 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.
- (2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
- (b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
- (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Reasonable procedures applied to a contracted function under paragraph (1) (d) that are designed to address any conflict of interest.
 - (iii) 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.
- (3) 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.

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- (b) 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 section 7 of this regulation;
- (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(d) 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;~~

Deleted: (d) The insurer shall maintain reasonable procedures to confirm consumer suitability information to the extent reasonably appropriate to identify, and to deter, insurance producer submission of inaccurate information. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity, or both;

(e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, ~~confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and~~

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(f) 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.

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(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function ~~(including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.~~

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(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not 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.~~

Deleted: (ii) Examination of a function under paragraph (1)(e); and
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(3) 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.

G. 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;

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- G. 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.

- H. (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. 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 limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.

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Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
 - (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
 - (b) 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.

Deleted: This safe harbor applies to FINRA broker-dealer sales of fixed annuities as well as variable annuities if the suitability and supervision is similar to the standards applied to variable annuity transactions.
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Section 7. Insurance Producer Training

- A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
 - (b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
- (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
- (3) The training required under this subsection shall include information on the following topics:
 - (a) The types of annuities and various classifications of annuities;
 - (b) Identification of the parties to an annuity;
 - (c) How fixed, variable and indexed annuity contract provisions affect consumers;
 - (d) The application of income taxation of qualified and non-qualified annuities;
 - (e) The primary uses of annuities; and

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- (f) Appropriate sales practices, replacement and disclosure requirements.
- (4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- (5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].
- (6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].
- (7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing producer continuing education course approval].
- (8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.
- (9) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 8. Compliance Mitigation; Penalties

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

- (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 regulation;
- ✓ (2) ~~A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and~~
- ✓ (3) ~~Appropriate penalties and sanctions.~~

✓ B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered ~~or the violation was not part of a pattern or practice.~~

Drafting Note: Subsection B above is intended to be consistent with the commissioner's discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

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Deleted: D. Any applicable penalty under [insert statutory citation] for an insurer's violation of section 6C of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if:¶

¶

Deleted: (1) Corrective action for the affected consumer(s) is taken promptly after a violation is discovered; and¶

¶

Deleted: (2) The insurer reviewed the recommendation and approved issuance of the annuity after consideration of the customer's suitability information as required under section 6F(1)(e) of this regulation. The review and approval may be made applying selection criteria as permitted under section 6F(1)(e) of this regulation.

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Drafting Note: A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, "shall" should be substituted for "may" in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State's statute that authorizes the commissioner to impose penalties and fines.

Section 9. [Optional] Recordkeeping *already in current law*

- ✓ A. Insurers, general agencies, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States this time period may be five (5) years.

- B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

Section 10. Effective Date

The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on [insert date], whichever is later.

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