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**IDAPA 18
TITLE 01
CHAPTER 09**

18.01.09 - CONSUMER PROTECTION IN ANNUITY TRANSACTIONS

000. LEGAL AUTHORITY.

This rule is promulgated pursuant to authority granted by Sections 41-211 and 41-1940, Idaho Code. (4-11-06)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 18.01.09 - "Consumer Protection in Annuity Transactions." (5-8-09)

02. Scope. This rule shall apply to any recommendation to purchase or exchange an annuity made to a consumer by a producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended. (5-8-09)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. (4-11-06)

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General" - General Provisions. (4-11-06)

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 18.01.09, "Consumer Protection in Annuity Transactions," adopts and incorporates by reference the following documents; (5-8-09)

a. United States Code, Title 29 - Labor, Chapter 18 - Employee Retirement and Income Security Act (ERISA). (4-11-06)

b. United States Code, Title 26 – Internal Revenue Code. (4-11-06)

c. NASD Manual Conduct Rules pertaining to suitability, specifically Rule 2310. Recommendations to Customers (Suitability) as amended. (4-11-06)

02. Availability of Referenced Documents. Printed copies of the documents described in Subsections 004.01.a. and 004.01.b. are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 as well as from the Department; the telephone number is (202) 512-1800, and electronic copies are available at <http://straylight.law.cornell.edu/uscode/>. Printed copies of the documents described in Subsection 004.01.c. are available from the Department and electronic copies are available from <http://nasd.complinet.com/nasd/display/index.html>. (4-11-06)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (4-11-06)

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (4-11-06)

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. (4-11-06)

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (4-11-06)

007. -- 009. (RESERVED).

010. DEFINITIONS.

As used in this rule, unless the context requires otherwise, the following words shall have the following meanings: (4-11-06)

01. Annuity. A fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity. (4-11-06)

02. Insurer. Includes every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuity. (4-11-06)

03. Producer. A person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. (4-11-06)

04. Recommendation. Advice provided by a producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice. (5-8-09)

011. EXEMPTIONS.

Unless otherwise specifically included, this rule shall not apply to recommendations of annuity purchases or exchanges involving (4-11-06)

01. Direct Response Solicitations. A response to a direct solicitation where there is no recommendation made based on information collected from the consumer pursuant to this rule; (5-8-09)

02. Contracts Used to Fund. (4-11-06)

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA) as amended; (4-11-06)

b. A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer; (4-11-06)

c. A government or church plan defined in Section 414 of the IRC, as amended, 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, as amended; (4-11-06)

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; (4-11-06)

e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; (4-11-06)

f. Formal prepaid funeral contracts; or (4-11-06)

g. Contracts used to fund funeral and related funeral expenses. (4-11-06)

012. -- 014. (RESERVED).

015. DUTIES OF INSURERS AND OF PRODUCERS.

01. General Rule. 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 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. (5-8-09)

02. Collection of Information. Prior to a recommendation to a consumer of a purchase or exchange of an annuity, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning: (5-8-09)

- a.** The consumer's financial status; (5-8-09)
- b.** The consumer's tax status; (5-8-09)
- c.** The consumer's investment objectives; and (5-8-09)
- d.** Such other information used or considered to be reasonable by the producer, or the insurer where no producer is involved, in making recommendations to the consumer. (5-8-09)

03. Exceptions. (4-11-06)

a. Except as provided under Subsection 015.03.b., neither a producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Subsection 015.01 related to any recommendation if a consumer: (5-8-09)

- i.** Refuses to provide relevant information requested by the insurer or producer. (4-11-06)
- ii.** Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or producer; or (4-11-06)
- iii.** Fails to provide complete or accurate information. (4-11-06)

b. If a producer, or the insurer where no producer is involved, sells an annuity to a consumer that is not the product recommended, the producer or insurer where no producer is involved, must: (5-8-09)

- i.** Document that the recommendation was not accepted as presented; and (4-11-06)
- ii.** Obtain the signature of the consumer evidencing the rejection or modification of the recommendation. (5-8-09)

016. SUPERVISORY DUTIES OF INSURER.

01. Written Procedures. An insurer shall either assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with Subsections 016.02 and 016.03, or shall establish and maintain such a system itself, which system shall include, but not be limited to: (4-11-06)

- a.** Maintaining written procedures; and (4-11-06)
- b.** Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule. (4-11-06)

02. Third Party. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subsection 016.01 with respect to insurance producers under contract with or employed by the third party. (4-11-06)

03. Third Party Contracting. An insurer shall make reasonable inquiry to assure that the third party contracting under Subsection 016.02 is performing the functions required under Subsection 016.01 and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions.

An insurer may comply with its obligation to make reasonable inquiry by doing all of the following: (4-11-06)

a. Annually obtaining a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and (4-11-06)

b. Based on reasonable selection criteria, periodically selecting third parties contracting under Subsection 016.02 for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances. (4-11-06)

04. Complies with the Requirements to Supervise. An insurer that contracts with a third party pursuant to Subsection 016.02 and that complies with the requirements to supervise in Subsection 016.03 shall have fulfilled its responsibilities under Subsection 016.01. (4-11-06)

05. Insurer, General Agent or Independent Agency. An insurer, general agent or independent agency is not required by Subsection 016.01 to: (4-11-06)

a. Review, or provide for review of, all producer solicited transactions; or (4-11-06)

b. Include in its system of supervision a producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency. (5-8-09)

06. Unable to Meet the Certification Criteria. A general agent or independent agency contracting with an insurer pursuant to Subsection 016.02 shall promptly, when requested by the insurer pursuant to Subsection 016.03, give a certification as described in Subsection 016.03.a. or give a clear statement that it is unable to meet the certification criteria. (4-11-06)

a. No person may provide a certification under Subsection 016.03.a. unless: (4-11-06)

i. The person is a senior manager with responsibility for the delegated functions; and (4-11-06)

ii. The person has a reasonable basis for making the certification. (4-11-06)

07. Director's Ability to Enforce the Provisions. Compliance with the NASD Conduct Rules pertaining to suitability shall satisfy the requirements under Sections 015 and 016 for the recommendation of variable annuities. However, nothing in Section 016 shall limit the director's ability to enforce the provisions of this rule. (4-11-06)

017. -- 020. (RESERVED).

021. RECORDKEEPING.

01. Maintaining Records. The insurer, general agent, independent agency and producer shall maintain or be able to make available to the director records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions, as long as the contract remains in force. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer, except as noted in Subsection 021.02. (5-8-09)

02. Termination. If the producer terminates the appointment with the insurer or his license, the producer must remit copies of all records as described under Subsection 021.01 to the insurer within twenty-one (21) days of termination. (4-11-06)

03. Form. Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document. (4-11-06)

022. -- 024. (RESERVED).

025. VIOLATIONS.

Any violation of this rule will be deemed a violation of Section 41-1940, Idaho Code.

(4-11-06)

026. -- 999. (RESERVED).

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