

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

Consumer Services

18.03.01 – Suitability in Annuity Transactions

Who does this rule apply to?

This rule applies to insurers, producers, and consumers of annuities.

What is the purpose of this rule?

The purpose of this rule requires insurers to establish a supervisor system for recommendations and sets standards for annuity transactions as a means to address consumer's insurance needs and financial objectives.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statutes passed by the Idaho Legislature:

Insurance -

Department of Insurance:

- [41-211, Idaho Code](#) – Rules

Life Insurance Policies and Annuity Contracts:

- [41-1940, Idaho Code](#) – Suitability of Annuity Sales to Consumers

Who do I contact for more information on this rule?

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Table of Contents

18.03.01 – Suitability In Annuity Transactions

000. Legal Authority.	3
001. Title And Scope.	3
002. Incorporation By Reference.	3
003. -- 009. (Reserved)	3
010. Definitions.	3
011. Transaction Exemptions.	4
012. -- 014. (Reserved)	5
015. Duties Of Insurers And Of Producers.	5
016. Producer Training.	7
017. -- 020. (Reserved)	8
021. Recordkeeping.	8
022. -- 999. (Reserved)	8

18.03.01 – SUITABILITY IN ANNUITY TRANSACTIONS

000. LEGAL AUTHORITY.

Title 41, Chapters 2 and 19, Sections 41-211 and 41-1940, Idaho Code. (4-4-13)

001. TITLE AND SCOPE.

01. **Title.** IDAPA 18.03.01, “Suitability in Annuity Transactions.” (4-4-13)

02. **Scope and Purpose.** This rule applies 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. The purpose of this rule 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. (3-20-20)

002. INCORPORATION BY REFERENCE.

01. **Incorporated Documents.** IDAPA 18.03.01, “Suitability in Annuity Transactions,” adopts and incorporates by reference parts of the following documents: (4-4-13)

a. United States Code, Title 29 - Labor, Chapter 18 - Employee Retirement and Income Security Act (ERISA). (4-4-13)

b. United States Code, Title 26 - Internal Revenue Code. (4-4-13)

c. FINRA Rule 2111, effective July 9, 2012. (4-4-13)

02. **Availability of Referenced Documents.** (4-4-13)

a. Printed copies of the documents described in Subsections 002.01.a. and 002.01.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 online at <https://www.govinfo.gov/content/pkg/USCODE-2011-title29/pdf/USCODE-2011-title29-chap18.pdf> and <http://www.law.cornell.edu/uscode/text/26>. (3-20-20)

b. A printed copy of the document described in 005.01.c. is available from FINRA, Two Union Square, 601 Union Street, Suite 1616, Seattle, WA 98101-2327, telephone (206) 624-0790, as well as from the Department, and an electronic copy is available online at https://www.finra.org/rules-guidance/rulebooks/finra-rules/2111?element_id=9859&rbid=2403. (3-20-20)

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Annuity.** An insurance product under State law that is individually solicited, whether classified as individual or group. (3-20-20)

02. **FINRA.** The Financial Industry Regulatory Authority or a succeeding agency. (4-4-13)

03. **Recommendation.** Advice provided by a producer or an insurer to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice. (4-4-13)

04. **Replacement.** A transaction in which a new policy or contract is purchased, and it is known or should be known to the proposing producer or insurer that by reason of the transaction, an existing policy or contract has been or is to be: (3-20-20)

a. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or terminated; (3-20-20)

b. Converted to reduced paid-up insurance, continued as extended term insurance, or reduced in value by the use of nonforfeiture benefits or other policy values; (3-20-20)

c. Amended to effect either a reduction in benefits or in the term for which coverage would remain in force or for which benefits would be paid; (3-20-20)

d. Reissued with any reduction in cash value; or (4-4-13)

e. Used in a financed purchase. (4-4-13)

05 Suitability Information. Information reasonably appropriate to determine the suitability of a recommendation, including the following: (3-20-20)

a. Age; (4-4-13)

b. Annual income; (4-4-13)

c. Financial situation and needs, including the financial resources used for the funding of the annuity; (4-4-13)

d. Financial experience; (4-4-13)

e. Financial objectives; (4-4-13)

f. Intended use of the annuity; (4-4-13)

g. Financial time horizon; (4-4-13)

h. Existing assets, including investment and life insurance holdings; (4-4-13)

i. Liquidity needs; (4-4-13)

j. Liquid net worth; (4-4-13)

k. Risk tolerance; and (4-4-13)

l. Tax status. (4-4-13)

011. TRANSACTION EXEMPTIONS.

Unless specifically included, this rule does not apply to transactions involving: (4-4-13)

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; (4-4-13)

02. Contracts Used to Fund: (3-20-20)

a. An employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act (ERISA); (4-4-13)

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; (4-4-13)

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; (4-4-13)

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; (4-4-13)

e. Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or

claim resolution process; (4-4-13)

f. Formal prepaid funeral contracts; or (4-4-13)

g. Prepaid contracts used to fund funeral and related funeral expenses governed by Sections 54-1131 et seq., Idaho Code. (4-4-13)

012. -- 014. (RESERVED)

015. DUTIES OF INSURERS AND OF PRODUCERS.

01. General Rule. In recommending to a consumer the purchase or exchange of an annuity that results in another insurance transaction or series of insurance transactions, the producer or insurer have a reasonable basis to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer the seller needs to have a reasonable basis to believe all of the following: (3-20-20)

a. The consumer has been reasonably informed of various features of the annuity, including: (4-4-13)

i. The potential surrender period and surrender charge; (4-4-13)

ii. The potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; (4-4-13)

iii. Mortality and expense fees; (4-4-13)

iv. Investment advisory fees; (4-4-13)

v. Potential charges for and features of riders; (4-4-13)

vi. Limitations on interest returns; (4-4-13)

vii. Insurance and investment components; and (4-4-13)

viii. Market risk; (4-4-13)

b. The consumer would benefit from certain features of the annuity; (3-20-20)

c. 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 for the particular consumer based on the suitability of the information provided; and (3-20-20)

d. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable and the producer or insurer has considered whether the consumer: (4-4-13)

i. Will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements; or (3-20-20)

ii. Would benefit from product enhancements and improvements; or (4-4-13)

iii. Has had another annuity exchange or replacement and, in particular, an exchange or replacement in the preceding thirty-six (36) months. (3-20-20)

02. Collection of Information. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, a producer, or insurer when no producer is involved, will make reasonable efforts to obtain the consumer's suitability information. (4-4-13)

03. Reasonable Basis. Except as permitted under Subsection 015.04, an insurer cannot 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. (3-20-20)

04. Exceptions. (4-4-13)

a. Except as provided in Title 41, neither a producer nor an insurer will have any obligation to a consumer under Subsection 015.01 or 015.03 related to any annuity transaction if: (3-20-20)

i. No recommendation is made; or (4-4-13)

ii. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer. (3-20-20)

05. Record Keeping. A producer or, when no producer is involved, the responsible insurer representative, will at the time of sale: (4-4-13)

a. Make a record of any recommendation subject to Subsection 015.01; (4-4-13)

b. Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and (4-4-13)

c. Obtain a customer signed statement that acknowledges that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction not based on the producer's or insurer's recommendation. (4-4-13)

06. Supervision for Compliance. (4-4-13)

a. An insurer will establish a supervision system reasonably designed to achieve the insurer's and its producers' compliance with this rule. This includes, but is not limited to, the following: (4-4-13)

i. Establishing and maintaining reasonable procedures to inform its producers of the requirements of this rule and incorporating the requirements of this rule into relevant producer training manuals; (4-4-13)

ii. Providing product-specific training and training materials that explain all material features of its annuity products to its producers; (4-4-13)

iii. Establishing and maintaining procedures for review of each recommendation, prior to issuance of an annuity, that are designed to ensure there is a reasonable basis to determine a recommendation is suitable. (3-20-20)

iv. Establishing and maintaining procedures to detect recommendations that are not suitable. (3-20-20)

v. Annually providing a report to senior management, including those responsible for audit functions, that details a review, with appropriate testing designed to determine the effectiveness of the supervision system, and includes any exceptions found and any corrective actions taken or recommended. (4-4-13)

b. Contracting. (4-4-13)

i. Nothing in this subsection restricts an insurer from contracting for performance of a function (including establishing and maintaining procedures) prescribed under Paragraph 015.06.a. of this rule. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties. (3-20-20)

ii. An insurer's supervision system under Paragraph 015.01.a. of this rule needs to include supervision of contractual performance under Subsection 015.06. This supervision of performance includes, but is not limited to, the following: (3-20-20)

(1) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (4-4-13)

(2) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed. (4-4-13)

07. Banned Actions. A producer cannot dissuade, or attempt to dissuade, a consumer from: (3-20-20)

a. Truthfully responding to an insurer's request for confirmation of suitability information; (4-4-13)

b. Filing a complaint; or (4-4-13)

c. Cooperating with the investigation of a complaint. (4-4-13)

08. Compliance With FINRA. (4-4-13)

a. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions as reflected in FINRA Rule 2111 will satisfy the requirements under this rule. 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 limits the Director's ability to enforce the provisions of this rule or investigate for compliance. (4-4-13)

b. For Paragraph 015.08.a. to apply, an insurer needs to: (3-20-20)

i. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and (4-4-13)

ii. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system. (4-4-13)

016. PRODUCER TRAINING.

01. General Rule. A producer will not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer may rely on insurer-provided, product-specific training standards and materials to comply with this subsection. (4-4-13)

02. Requisite Producer Training Courses and Education. (3-20-20)

a. A producer who engages in the sale of annuity products will complete a one-time, four-credit training course approved by the Department and provided by the Department-approved education provider. (4-4-13)

b. The minimum length of the training prescribed under this subsection is sufficient to qualify for at least four (4) CE credits, but may be longer. (3-20-20)

c. The training prescribed under this subsection will include information on the following topics: (3-20-20)

i. The types of annuities and various classifications of annuities; (4-4-13)

ii. Identification of the parties to an annuity; (4-4-13)

iii. How fixed, variable and indexed annuity contract provisions affect consumers; (4-4-13)

iv. The application of income taxation of qualified and non-qualified annuities; (4-4-13)

- v. The primary uses of annuities; and (4-4-13)
- vi. Appropriate sales practices, replacement and disclosure requirements. (4-4-13)
- d. Providers of courses intended to comply with this subsection will cover all topics listed in the prescribed outline and will 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 prescribed outline. (3-20-20)
- e. A provider of an annuity training course intended to comply with this subsection will register as a CE provider in this State and comply with the rules and guidelines applicable to producer continuing education courses as set forth in IDAPA 18.06.04. (4-4-13)
- f. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with IDAPA 18.06.04. (4-4-13)
- g. Training requirements of another State substantially similar to the provisions of this subsection will satisfy the training requirements of this subsection in this State. (3-20-20)
- h. An insurer needs to verify that a producer has completed the annuity training course prescribed under this subsection before allowing the producer to sell an annuity product for that insurer. (3-20-20)

017. -- 020. (RESERVED)

021. RECORDKEEPING.

- 01. Termination.** If the producer's appointment with the insurer is terminated or license suspended or revoked, the producer needs to remit copies of all records to the insurer in twenty-one (21) days of termination or change in license status. (3-20-20)
- 03. Form.** Records prescribed to be maintained by this rule may be maintained on any media and by any process that accurately reproduces the original document. (3-20-20)

022. -- 999. (RESERVED)

Subject Index

D

- Definitions, IDAPA 18.03.01 3
 - Annuity 3
 - FINRA 3
 - Recommendation 3
 - Replacement 3
 - Suitability Information 4
- Duties Of Insurers & Of Producers 5
 - Banned Actions 7
 - Collection of Information 5
 - Compliance With FINRA 7
 - Exceptions 6
 - General Rule 5
 - Reasonable Basis 6
 - Record Keeping 6
 - Supervision for Compliance 6

I

- Incorporation By Reference 3

L

- Legal Authority 3

P

- Producer Training 7
 - General Rule 7
 - Requisite Producer Training Courses and Education 7

R

- Recordkeeping 8
 - Form 8
 - Termination 8

T

- Title & Scope 3
- Transaction Exemptions 4
 - Contracts Used to Fund 4
 - Direct Response Solicitations 4