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18.01.09 - Suitability In Annuity Transactions

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**IDAPA 18
TITLE 01
CHAPTER 09**

18.01.09 - SUITABILITY IN ANNUITY TRANSACTIONS

000. LEGAL AUTHORITY.

This rule is promulgated pursuant to authority granted by Sections 41-211 and 41-1940, Idaho Code. (4-4-13)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 18.01.09, "Suitability in Annuity Transactions." (4-4-13)

02. Scope. 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. (4-4-13)

002. PURPOSE.

01. Purpose. 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. (4-4-13)

02. Violation of Rule. Nothing herein is construed to create or imply a private cause of action for a violation of this rule. (4-4-13)

003. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. (4-4-13)

004. ADMINISTRATIVE APPEALS.

All administrative appeals are 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," Subchapter B -- Contested Cases. (4-4-13)

005. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 18.01.09, "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 005.01.a. and 005.01.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 <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title29/pdf/USCODE-2011-title29-chap18.pdf> and <http://www.law.cornell.edu/uscode/text/26>. (4-4-13)

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 <http://finra.complinet.com/en/display/>

[display_main.html?rbid=2403&element_id=9859](#).

(4-4-13)

006. 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. (4-4-13)

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (4-4-13)

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (4-4-13)

007. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (4-4-13)

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Annuity. 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. (4-4-13)

02. Continuing Education Credit or CE Credit. One continuing education credit as more particularly described in IDAPA 18.01.53, "Continuing Education". (4-4-13)

03. Continuing Education Provider or CE Provider. An individual or entity that is approved to offer continuing education courses pursuant to IDAPA 18.01.53, "Continuing Education". (4-4-13)

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

05. Insurer. A company required to be licensed under the laws of this state to provide insurance products, including annuities. (4-4-13)

06. Producer. A person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. (4-4-13)

07. 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)

08. Replacement. 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 proposing insurer that by reason of the transaction, an existing policy or contract has been or is to be:

a. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated; (4-4-13)

b. 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; (4-4-13)

c. 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; (4-4-13)

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

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

09. Suitability Information. Information that is reasonably appropriate to determine the suitability of a recommendation, including the following: (4-4-13)

- 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 otherwise 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. Contracts that are used to fund: (4-4-13)

a. An employee pension or welfare benefit plan that is 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 of 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 of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the producer or insurer must have a reasonable basis to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer. These facts include the consumer's suitability information and information regarding the consumer's investments and other insurance products, and financial situation and needs. The seller must also have a reasonable basis to believe all of the following: (4-4-13)

- 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, such as tax-deferred growth, annuitization, or death or living benefit; (4-4-13)
- 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 his suitability information; and (4-4-13)
- 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 (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; or (4-4-13)
 - 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 within the preceding thirty-six (36) months. (4-4-13)

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, shall 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 may 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. (4-4-13)

04. Exceptions. (4-4-13)

a. Except as provided under Paragraph 015.04.b., neither a producer nor an insurer shall have any obligation to a consumer under Subsection 015.01 or 015.03 related to any annuity transaction if: (4-4-13)

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; or (4-4-13)

iii. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or (4-4-13)

iv. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the producer. (4-4-13)

b. An insurer's issuance of an annuity subject to Paragraph 015.04.a. will be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued. (4-4-13)

05. Record Keeping. A producer or, when no producer is involved, the responsible insurer representative, shall 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 that is not based on the producer's or insurer's recommendation. (4-4-13)

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

a. An insurer shall establish a supervision system that is 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. Establishing standards for producer product training and establishing and maintaining reasonable procedures to require its producers to comply with the requirements of Section 016 of this rule; (4-4-13)

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

iv. Establishing and maintaining 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; (4-4-13)

v. Establishing and maintaining procedures to detect recommendations that are not suitable. These procedures may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters; or programs of internal monitoring. Nothing in this subparagraph prevents an insurer from

complying with this rule by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and (4-4-13)

vi. 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) required 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 pursuant to Section 025 of this rule regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Subparagraph 015.06.a.ii.(2) of this rule. (4-4-13)

ii. An insurer's supervision system under Paragraph 015.01.a. of this rule must include supervision of contractual performance under Subsection 015.06. This supervision of performance includes, but is not limited to, the following: (4-4-13)

(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)

c. An insurer is not required to include in its system of supervision a producer's recommendations to consumers of products other than the annuities offered by the insurer. (4-4-13)

07. Prohibitions. A producer may not dissuade, or attempt to dissuade, a consumer from: (4-4-13)

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 must: (4-4-13)

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 shall 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. Required Producer Training Courses and Education. (4-4-13)

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

b. Producers who hold a life insurance line of authority on the effective date of this rule and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this rule. Individuals who obtain a life insurance line of authority on or after the effective date of this rule may not engage in the sale of annuities until the annuity training course required under this subsection has been completed. (4-4-13)

c. 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. (4-4-13)

d. The training required under this subsection shall include information on the following topics: (4-4-13)

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)

e. 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. (4-4-13)

f. 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 producer continuing education courses as set forth in IDAPA 18.01.53. (4-4-13)

g. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with IDAPA 18.01.53. (4-4-13)

h. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with IDAPA 18.01.53. (4-4-13)

i. 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. (4-4-13)

j. An insurer shall verify that a 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 Department-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers. (4-4-13)

017. -- 020. (RESERVED)

021. RECORDKEEPING.

01. Maintaining Records. Insurers and producers must maintain, and be able to provide to the Director, records of all information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for as long as the insurance transaction remains in force. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

(4-4-13)

02. Termination. If the producer's appointment with the insurer is terminated or his license is suspended or revoked, the producer must remit copies of all records as described under Subsection 021.01 to the insurer within twenty-one (21) days of termination or change in license status.

(4-4-13)

03. Form. Records required to be maintained by this rule may be maintained on any media and by any process that accurately reproduces the original document.

(4-4-13)

022. -- 024. (RESERVED)

025. COMPLIANCE MITIGATION - VIOLATIONS - PENALTIES.

01. Corrective Action. An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer or its producer, the Director may order:

(4-4-13)

a. An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or producer's violation of this rule;

(4-4-13)

b. A general agency, independent agency or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this rule; and

(4-4-13)

c. Appropriate penalties and sanctions.

(4-4-13)

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

(4-4-13)

03. Reduction of Penalty. Any applicable penalty under Section 41-117, Idaho Code, for a violation of this rule may be reduced or eliminated 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.

(4-4-13)

026. -- 999. (RESERVED)

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