
SUITABILITY IN ANNUITY TRANSACTIONS

Must be completed and accompany applications for annuities

Applicant's Name _____

Applicant's Address _____

I have made reasonable efforts to obtain the following information regarding the applicant's financial status and objectives prior to making the recommendation of this product.

- | | |
|--|---|
| <input type="checkbox"/> Tax Status | <input type="checkbox"/> Source of funds |
| <input type="checkbox"/> Investment Objectives | <input type="checkbox"/> Dependent information |
| <input type="checkbox"/> Liquidity needs | <input type="checkbox"/> Need for Income |
| <input type="checkbox"/> Investment experience | <input type="checkbox"/> Need for an annuity contract |

Other _____

I understand I must keep records of the information used in making this recommendation, and I agree that I will provide those records to the insurer upon request. The time period for record retention will be no less than that required by the Suitability in Annuity Transactions regulation as adopted by the state in which the contract is issued.

Agent's Signature

Date

If the annuity sold is not the product recommended, the applicant must read the following statement and sign below.

I have chosen to purchase an annuity other than the recommended product.

Applicant's Signature

Date

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211 CMR 96.00: CONSUMER PROTECTION IN ANNUITY TRANSACTIONS

Section

- 96.01: Purpose
- 96.02: Scope
- 96.03: Authority
- 96.04: Exemptions
- 96.05: Definitions
- 96.06: Duties of Insurance Producers and Insurers
- 96.07: Penalties
- 96.08: Recordkeeping
- 96.09: Severability
- 96.10: Effective Date

96.01: Purpose

(1) 211 CMR 96.00 sets forth standards and procedures for insurance producers, or insurers where no producer is involved, who make recommendations to consumers that result in a transaction involving annuity products to improve consumers' understanding of the annuity products for which recommendations have been made and so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of 211 CMR 96.00.

96.02: Scope

211 CMR 96.00 shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or insurer where no producer is involved, that results in the purchase or exchange recommended.

96.03: Authority

211 CMR 96.00 is issued based on the authority granted the Commissioner of Insurance under the provisions of M.G.L. c. 176D.

96.04: Exemptions

Unless otherwise specifically included, 211 CMR 96.00 shall not apply to recommendations involving:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to 211 CMR 96.00.
- (2) Contracts used to fund:
 - (a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), if established or maintained by an employer;
 - (c) 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;
 - (d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - (e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (f) Formal prepaid funeral contracts.

96.05: Definitions

Annuity means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

Commissioner means the Commissioner of Insurance.

Insurer means a company required to be licensed under the laws of Massachusetts to provide insurance products, including annuities.

Insurance Producer means a person required to be licensed under the laws of Massachusetts to sell, solicit or negotiate insurance, including annuities.

Person means any individual, corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

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 or exchange of an annuity in accordance with that advice.

96.06: Duties of Insurance Producers and Insurers

(1) 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.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

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

(3) (a) Except as provided under 211 CMR 96.06(3)(b), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under 211 CMR 96.06(1) related to any recommendation if a consumer:

1. Refuses to provide relevant information requested by the insurance producer or insurer;
2. Decides to enter into an insurance transaction that is not based on a recommendation of the insurance producer or insurer; or
3. Fails to provide complete or accurate information.

(b) An insurance producer's or insurer's recommendation subject to 211 CMR 96.06(3)(a) shall be reasonable under all the circumstances actually known to the insurance producer or insurer at the time of the recommendation.

(4)(a) An insurer either shall assure that a system to supervise recommendations made by the insurer or the insurer's producers is established and maintained by complying with 211 CMR 96.06(4), or shall establish and maintain such a system. The system shall be reasonably designed to achieve compliance with 211 CMR 96.00 and shall include, but not be limited to:

1. Maintaining written procedures; and
2. Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of 211 CMR 96.00.

(b) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with 211 CMR 96.00, or shall establish and maintain such a system, including, but not limited to:

211 CMR: DIVISION OF INSURANCE

96.06: continued

1. Maintaining written procedures; and
 2. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of 211 CMR 96.00.
- (c) 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 211 CMR 96.06(4)(a) with respect to insurance producers.
- (d) An insurer shall make reasonable inquiry to assure that the third party contracting under 211 CMR 96.06(4)(c) is performing the functions required under 211 CMR 96.06(4)(a) 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:
1. The insurer annually obtains 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
 2. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under 211 CMR 96.06(4)(c) 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.
- (e) An insurer that contracts with a third party pursuant to 211 CMR 96.06(4)(c) and that complies with the requirements to supervise in 211 CMR 96.06(4)(d) shall have fulfilled its responsibilities under 211 CMR 96.06(4)(a).
- (f) An insurer, general agent or independent agency is not required by 211 CMR 96.06(4)(a) or (4)(b) to:
1. Review, or provide for review of, all insurance producer solicited transactions; or
 2. Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.
- (g) A third party, including a general agent or independent agency, that has contracted with an insurer pursuant to 211 CMR 96.06(4)(c) shall promptly, when requested by the insurer pursuant to 211 CMR 96.06(4)(d), give a certification as described in 211 CMR 96.06(4)(d) or give a clear statement that it is unable to meet the certification criteria.
- (h) No person may provide a certification under 211 CMR 96.06(4)(d)1. unless:
1. The person is a senior manager with responsibility for the delegated functions; and
 2. The person has a reasonable basis for making the certification.
- (5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under 211 CMR 96.06 for the recommendation of variable annuities. However, nothing in 211 CMR 96.06(5) shall limit the Commissioner's ability to enforce the provisions of 211 CMR 96.00.

96.07: Penalties

- (1) In addition to any other penalties provided by the laws of Massachusetts, an insurance producer or insurer that violates a requirement of 211 CMR 96.00 shall be deemed to be in violation of the provisions of M.G.L. c. 176D.
- (2) The Commissioner may order:
 - (a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its producer's, violation of 211 CMR 96.00;
 - (b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of 211 CMR 96.00; and
 - (c) Any person that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of 211 CMR 96.00.
- (3) When determining the appropriate penalty under M.G.L. c. 176D for violations of 211 CMR 96.06(1), (2) or (3)(b), the Commissioner may take into consideration whether corrective action was taken for the consumer promptly after such violation was discovered.

211 CMR: DIVISION OF INSURANCE

96.08: Recordkeeping

(1) Insurance producers and insurers 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 five 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.

(2) Records required to be maintained by 211 CMR 96.00 may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

96.09: Severability

If any provision of 211 CMR 96.00 is held to be invalid, in any way, by any court of law, the remainder of 211 CMR 96.00 shall not be affected.

96.10: Effective Date

211 CMR 96.00 is effective on November 5, 2006 and shall apply to recommendations made after November 5, 2006 to a consumer to purchase or exchange an annuity by an insurance producer, or an insurer where no producer is involved, that result in the purchase or exchange recommended.

REGULATORY AUTHORITY

211 CMR 96.00: M.G.L., c. 176D.

211 CMR: DIVISION OF INSURANCE

(211 CMR 97.00 THROUGH 109.00: RESERVED)

(PAGES 651 THROUGH 660 ARE RESERVED FOR FUTURE USE.)