
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

SUITABILITY IN ANNUITY TRANSACTIONS

Must be completed and accompany applications for annuities

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Applicant's Address _____

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

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Applicant's Signature

Date

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TITLE 50: INSURANCE

CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATIONS
SUBCHAPTER ii:
INSURANCE PRODUCERS, LIMITED INSURANCE REPRESENTATIVES AND REGISTERED FIRMS
PART 3120 SUITABILITY IN ANNUITY TRANSACTIONS

The General Assembly's Illinois Administrative Code database includes only those rulemakings that have been permanently adopted. This menu will point out the Sections on which an emergency rule (valid for a maximum of 150 days, usually until replaced by a permanent rulemaking) exists. The emergency rulemaking is linked through the notation that follows the Section heading in the menu.

- [Section 3120.10 Purpose](#)
- [Section 3120.20 Scope](#)
- [Section 3120.30 Exemptions](#)
- [Section 3120.40 Definitions](#)
- [Section 3120.50 Duties of Insurers and Insurance Producers](#)
- [Section 3120.60 Mitigation of Responsibility](#)
- [Section 3120.70 Recordkeeping](#)
- [Section 3120.80 Noncompliance](#)

AUTHORITY: Implementing and authorized by Article XXXI of the Illinois Insurance Code [215 ILCS 5/Art. XXXI] and further authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/401].

SOURCE: Adopted at 31 Ill. Reg. 12747, effective January 1, 2008.

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PART 3120 SUITABILITY IN ANNUITY TRANSACTIONS

SECTION 3120.10 PURPOSE

Section 3120.10 Purpose

- a) The purpose of this Part is to set forth standards and procedures for recommendations by insurers or insurance producers 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 in this Part shall be construed to create or imply a private cause of action for a violation of this Part.

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SECTION 3120.20 SCOPE

Section 3120.20 Scope

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

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Section 3120.30 Exemptions

Unless otherwise specifically included, this Part shall not apply to recommendations involving:

- a) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Part.
- 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);
 - 2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC) (26 USCS 401 et seq.), 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.

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SECTION 3120.40 DEFINITIONS**

Section 3120.40 Definitions

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

Code means the Illinois Insurance Code [215 ILCS 5].

Department means the Department of Financial and Professional Regulation.

Director means the Director of the Illinois Department of Financial and Professional Regulation-Division of Insurance.

Division means the Illinois Department of Financial and Professional Regulation-Division of Insurance.

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

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

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.

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Section 3120.50 Duties of Insurers and 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.
- b) 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:
 - 1) The consumer's financial status;
 - 2) The consumer's tax status;
 - 3) The consumer's investment objectives; and
 - 4) 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.
- c) Recommendation to Consumer
 - 1) Except as provided under subsection (c)(2), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subsection (a) related to any recommendation if a consumer:
 - A) Refuses to provide relevant information requested by the insurer or insurance producer;
 - B) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
 - C) Fails to provide complete or accurate information.
 - 2) An insurer or insurance producer's recommendation subject to subsection (c)(1) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

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- d) Supervision of Recommendations
- 1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this Part is established and maintained by complying with subsections (d)(3) through (5) or shall establish and maintain such a system, including, but not limited to:
 - A) Maintaining written procedures; and
 - B) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Part.
 - 2) A managing general agent, as defined in Section 141a of the Code, either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this Part or shall establish and maintain such a system, including, but not limited to:
 - A) Maintaining written procedures; and
 - B) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this Part.
 - 3) An insurer may contract with a third party, including a managing general agent, to establish and maintain a system of supervision as required by subsection (d)(1) with respect to insurance producers under contract with or employed by the third party.
 - 4) An insurer shall make reasonable inquiry to assure that the third party, including a managing general agent, contracting under subsection (d)(3) is performing the functions required under subsection (d)(1) 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:
 - A) The insurer annually obtains a certification from a third party, including a managing general agent or other person 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
 - B) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subsection (d)(3) for a review to determine whether the third parties are performing the required functions. In conducting the review, the insurer shall perform those procedures that are reasonable under the circumstances.
 - 5) An insurer that contracts with a third party, including a managing general agent, pursuant to subsection (d)(3) and that complies with the requirements to supervise in subsection (d)(4) shall have fulfilled its responsibilities under subsection (d)(1).

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- 6) An insurer or managing general agent, is not required by subsection (d)(1) or (2) to:
 - A) Review, or provide for review of, all insurance producer solicited transactions; or
 - B) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer or managing general agent.
- 7) A managing general agent contracting with an insurer pursuant to subsection (d)(3) shall promptly, when requested by the insurer pursuant to subsection (d)(4), give a certification as described in subsection (d)(4) or give a clear statement that it is unable to meet the certification criteria.
- 8) No person may provide a certification under subsection (d)(4)(A) unless:
 - A) The person is a senior manager with responsibility for the delegated functions; and
 - B) The person has a reasonable basis for making the certification.
- e) Compliance with the National Association of Securities Dealers Conduct Rules (1735 K Street, N.W., Washington, D.C. 20006) (adopted by SR-NASD-95-39, eff. Aug. 20, 1996, no later editions or amendments are included) pertaining to suitability shall satisfy the requirements of this Section for the recommendation of variable annuities. However, nothing in this subsection shall limit the Director's ability to enforce the provisions of this Part.

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SECTION 3120.60 MITIGATION OF RESPONSIBILITY

Section 3120.60 Mitigation of Responsibility

In addition to any other action authorized by the Code, the Director may order:

- 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 Part;
- b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Part; and
- c) A managing general agent that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers shall take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Part.

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SECTION 3120.70 RECORDKEEPING

Section 3120.70 Recordkeeping

- a) Insurers, managing general agents and insurance producers shall maintain and 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 for 7 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.
- b) Records required to be maintained by this Part may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media, or by any process that accurately reproduces the original document.

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SECTION 3120.80 NONCOMPLIANCE

Section 3120.80 Noncompliance

Violation of the requirements of this Part shall be an unfair trade practice and evidence of incompetence or untrustworthiness in the conduct of business under Section 500-70(a)(7) and (8) of the Code.