

Section 4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- 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), 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; or
 - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
- C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- D. Formal prepaid funeral contracts.

Section 5. Definitions

- A. "Annuity" means 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.
- B.

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- (h) The requirements under Subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.
 - (i) The requirements under Subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.
 - (j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:
 - (i) The consumer 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;
 - (ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and
 - (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.
 - (k) Nothing in this regulation should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.
- (2) Disclosure obligation.
- (a) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:
 - (i) A

(III) Variable annuities;

(1) Except as provided under Paragraph (2), a producer shall have no obligation to a consumer under Subsection A(1) related to any annuity transaction if:

- (a) No recommendation is made;
- (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
- (c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

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- (e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with Subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's

- (ii) 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) An insurer is not required to include in its system of supervision:
 - (a) A producer's recommendations to consumers of products other than the annuities offered by the insurer; or
 - (b) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.
- D. Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:
 - (1) Truthfully responding to an insurer's request for confirmation of the consumer profile information;
 - (2) Filing a complaint; or
 - (3)

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- (b) Provide to the entity responsible for supervising the financial professional seeking to rely on Paragraph (1), such as the financial professional's broker-dealer or investment adviser registered under federal [or state] securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.
- (4) For purposes of this subsection, "financial professional" means a producer that is regulated and acting as:
 - (a) A broker-dealer registered under federal [or state] securities laws or a registered

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- B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] 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.

Drafting Note: Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of Subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

Drafting Note: A state that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States shole tooseseseneat(i)-3.3 (s)-1.fe t17 (s)-1.3 (u)-0.7 (t)2.7 (e)-1 (n)4 (t)2.6 (y)0.7 if t3U(u)-

APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES
Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION ("Me", "I", "My")

First Name: _____ Last Name:

Business\Agency Name: _____ Website:

Business Mailing

Address: _____

Business Telephone Number:

Email Address: _____

National Producer Number in
[state]: _____

CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name:

What Types of Products Can I Sell You?

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

Fixed or Fixed Indexed Annuities

Variable Annuities

Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked

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Whose Annuities Can I Sell to You?

I am authorized to sell:

Annuities from Only One (1) Insurer	Annuities from Two or More Insurers
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APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

Why are You being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, your financial situation, insurance needs and financial objectives.

If You sign this form, it means You know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of [this state].

Customer Signature

Date

Agent/Producer Signature

Date