

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF LIFE AND HEALTH

Advertisement of Life Insurance and Annuities; Disclosure Requirements for Annuities Directly Solicited to Consumers; and Suitability Requirements for Annuities Directly Solicited to Consumers

Proposed Amendments: N.J.A.C. 11:2-23.5 and 11:4-59.1

Proposed New Rules: N.J.A.C. 11:4-59A

Proposed Repeals: N.J.A.C. 11:4-59.5 and 59.6

Authorized By: Kenneth E. Kobylowski, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22A-26 et seq., 17B:25-34 et seq., and 17B:30-1 et seq.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2012-081.

Submit comments by August 3, 2012 to:

Robert J. Melillo, Chief
Legislation and Regulation
Department of Banking and Insurance
20 West State Street
P.O. Box 325

Trenton, NJ 08625-0325

Fax: (609) 292-0896

E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

N.J.S.A. 17B:25-34 et seq. (the Act) was approved on September 19, 2008 and became effective on April 1, 2009. The Act prescribes marketing, information disclosure, and product suitability requirements for all current and future issues of individual fixed and variable deferred and immediate annuity contracts solicited directly to consumers. Among other things, the Act requires the Commissioner of Banking and Insurance (Commissioner) to approve an annuities buyer's guide and the standard form of an annuity contract disclosure statement to be used by an insurance producer, agent, representative of a fraternal benefit society not required to be licensed as an insurance producer, or an insurer in the solicitation, negotiation, or sale of an annuity. The Act also requires that those selling these products make reasonable efforts to obtain and record information about the suitability of the product for the solicited consumer and the consumer's acknowledgement of the information recorded. The Department of Banking and Insurance (Department) issued Bulletin No. 09-06 on March 9, 2009 and Bulletin No. 09-12 on April 20, 2009 to provide guidance regarding the implementation of the Act pending promulgation of rules. Effective June 6, 2011, the Department adopted rules to implement the Act. In 2010, when the rules were being developed for proposal, the National Association of Insurance Commissioners (NAIC) had not yet adopted final revisions to its Suitability in Annuity Transactions Model Regulation (NAIC Model). In

its rules, the Department utilized aspects of the draft NAIC Model in providing for suitability standards and insurer supervision procedures, which are required pursuant to N.J.S.A. 17B:25-38. Since the rules were adopted, the Department has received numerous inquiries from insurers and producers as to whether aspects of the final NAIC Model apply. Upon review, the Department has determined that it is reasonable and appropriate to propose new rules to replace the existing suitability rules and insurer supervision rules at N.J.A.C. 11:4-59.5 and 59.6 with new rules, N.J.A.C. 11:4-59A, to track the NAIC Model. The Department believes that the proposed new rules will provide further guidance to producers and insurers, reduce confusion, and provide uniformity by reflecting the nationwide standards for determining suitability and providing insurer supervision of producer activities. The existing requirements are more general in nature with respect to standards for determining suitability and insurer supervision procedures. As set forth below, the proposed new rules set forth specific standards and requirements with respect to those areas reflecting the current NAIC Model.

The Department is proposing to repeal N.J.A.C. 11:4-59.5 and 59.6 for the reasons set forth above. The Department is also proposing to amend N.J.A.C. 11:2-23.5(p) to add the reference to proposed new rules N.J.A.C. 11:4-59A, regarding suitability requirements for annuities. Further, the Department is proposing to amend N.J.A.C. 11:4-59.1 to delete references to suitability requirements in the “Purpose and scope” section of those rules as no longer applicable. The heading of Subchapter 59 is also proposed to be revised for the same reason.

Finally, the Department is proposing to recodify N.J.A.C. 11:4-59.7 as 59.5 as a matter of form.

A summary of the proposed new rules follows.

Proposed N.J.A.C. 11:4-59A.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:4-59A.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:4-59A.3 sets forth duties of insurers and insurance producers in determining the suitability of an annuity to the consumer. The proposed new rule requires that 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 insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of 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, including the consumer's "suitability information," as defined in the rules, and that there is a reasonable basis to believe specified factors, including, but not limited to, the following:

- 1) that the consumer has been reasonably informed of various features of the annuity, such as surrender period, surrender charges, tax penalties and fees; 2) that the consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization or death or living benefits; 3) that the particular annuity as a whole is suitable and, in the case of an exchange or replacement, that the transaction as a whole is suitable for the particular consumer based on his or her suitability information; and 4)

that in the exchange or replacement of an annuity, such action is suitable taking into consideration specific factors set forth in the rule.

The proposed new rule further provides that prior to execution of the purchase, the insurer or producer shall make reasonable efforts to obtain the consumer's suitability information. 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. This obligation will not apply if no recommendation is made; a recommendation was made and later found to be have been prepared based on materially inaccurate information provided by the consumer; a consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or insurance producer. In all cases however, the issuance of an annuity must be reasonable under all circumstances actually known to the insurer at the time the annuity is issued.

The proposed new rule also provides that the insurance producer or, where no producer is involved, the insurer representative, shall at the time of sale make a record of any recommendation to purchase the annuity, obtain a statement signed by the customer documenting a customer's refusal to provide suitability information, if applicable, and obtain a statement signed by the customer acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

The proposed new rule also implements the requirement in N.J.S.A. 17B:25-38 that an insurer establish a system of supervision that is reasonably designed to achieve the

insurer's and insurance producers' compliance with these rules, including, but not limited to, the following: the insurer must maintain reasonable procedures to inform its producers of the requirements of the rules and incorporate the requirements of the rules into relevant insurance producer training manuals; the insurer must establish standards for insurance producer product training and maintain reasonable procedures to require such producers to comply with the requirements of N.J.A.C. 11:4-59A.4; the insurer must provide product-specific training and training materials; the insurer must maintain 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 (which procedures may apply a screening system); and the insurer must maintain reasonable procedures to detect recommendations that are not suitable, which may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Insurers may comply with this last requirement by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity. Further, the insurer must provide a report to senior management, including the senior manager responsible for audit functions, which details a review designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended if any.

Insurers may contract for performance of any function related to the supervision procedures. However, insurers must provide appropriate monitoring of the contracted entity as set forth in the proposed new rule.

The proposed new rule also provides that an insurance producer may not dissuade, or attempt to dissuade, a consumer from truthfully responding to an insurer's request for confirmation of suitability information; from filing a complaint; or from cooperating with the investigation of a complaint.

The proposed new rule also provides that sales made in compliance with the requirements of the Financial Industry Regulatory Authority (FINRA) or succeeding agency, pertaining to suitability and supervision of annuity transactions, shall satisfy the requirements under the proposed rules. In order for this exception to apply, an insurer must monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business, and provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain the insurer's supervision system.

Proposed N.J.A.C. 11:4-59A.4 sets forth requirements for insurance producer training. Specifically, an insurance producer may not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity, and the insurance producer is in compliance with the insurer's standards for product training. In addition, a producer who engages in the sale of annuity products shall complete a one-time, minimum four-credit training course approved by the Department and provided by a Department-approved education provider. In addition, producers who, on the effective date of these rules, desire to sell annuities shall complete the requirements of the rule regarding producer training within six months after the effective date of the rules. Individuals who obtain authority to write annuities on or after

the effective date of the subchapter may not engage in the sale of annuities until the annuity training course required under the rule has been completed.

The proposed rule also sets forth the information that must be included in any required training. In addition, providers of courses intended to comply with this rule shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sale techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to those in the required outline. Providers of courses must meet the standards for providers applicable to producer continuing education set forth in N.J.A.C. 11:17-3. Annuity training courses also may be conducted and completed by classroom or self-study methods in accordance with N.J.A.C. 11:17-3. Similarly, providers of courses shall comply with the reporting requirements and issue certificates of completion in accordance with N.J.A.C. 11:17-3. The satisfaction of training requirements of another state that are substantially similar to the provisions of these rules shall be deemed to satisfy the training requirements of this rule.

Finally, the proposed rule requires that an insurer verify that an insurance producer has completed the annuity training course required under the rule before allowing the producer to sell an annuity product for that insurer. An insurer can satisfy its responsibility under this rule by obtaining certificates of completion of the training course or obtaining reports provided by Commissioner-sponsored database systems or vendors or from a reasonably reliable commercial data base vendor that has a reporting arrangement with approved insurance education providers.

Proposed N.J.A.C. 11:4-59A.5 sets forth recordkeeping requirements for insurers and insurance producers and requires such entities to maintain or be capable of making available to the Commissioner such records for 10 years. Records may be maintained in paper, photographic, micro-process, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

N.J.A.C. 11:4-59A.6 sets forth compliance mitigation and penalties for the proposed new rules.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules, amendments, and repeals will have a positive social impact by further implementing the intent of the Legislature as set forth in the Act to prescribe suitability and insurer supervisory standards regarding annuity products directly solicited to consumers. That intent is to prevent the fraudulent and misleading marketing of annuity products by insurers, brokers, and agents; ensure that annuity products ultimately issued to consumers are suitable to their insurance and financial objectives; and enhance oversight of the sale of annuity products, including enforcement against violations through the Department. As noted in the proposal Summary above, these standards reflect the national standard for suitability, insurer supervision of producers, and producer training as set forth by the NAIC.

Economic Impact

Insurance producers and agents, representatives and members of fraternal benefit societies not required to be licensed as insurance producers, and insurers will be required to bear any costs associated with complying with the requirements in the proposed new rules, which are set forth in detail in the proposal Summary above. In general, insurance producers and insurers will be required to obtain and determine suitability information from consumers, and determine the suitability of an insurance product to a particular consumer based on the suitability information. In addition, insurers or those with whom they have contracted to provide such supervision will be required to supervise their producers, and insurers and producers will be required to maintain applicable records. Further, producers will be required to obtain requisite training, and insurers will be required to ensure that such training has in fact occurred. Professional services required to comply with these rules include legal and financial services. The Department believes that those parties required to provide and obtain information as set forth in the proposed new rules currently possess the requisite expertise to comply with these proposed requirements.

As noted in the Summary above, the proposed requirements track the national standard as adopted by the NAIC related to these areas. Moreover, these requirements further implement the requirements related to suitability for the sale of annuities and ensure supervision of insurance producers as required in N.J.S.A. 17B:25-34 et seq. Indeed, the Department believes that by utilizing the national standard adopted by the NAIC, insurers and producers will be in a better position to obtain required information to determine suitability, provide and receive training, and monitor the sales of annuities

to ensure compliance with such standards. By further enhancing the implementation of N.J.S.A. 17B:25-34 et seq. with respect to the suitability of annuities sold to consumers and better ensuring adequate supervision of such activities, enhanced protections will be afforded to consumers as contemplated by the Legislature in the Act. Moreover, uniform standards will provide regulated entities subject to the rules with consistency and uniformity as to compliance with requirements that are consistent with the national standard reflected in the model rule adopted by the NAIC, thereby reducing the costs and administrative burdens related to complying with differing or possibly duplicative standards. Accordingly, any costs that may be imposed by the proposed new rules are far outweighed by the benefits to be achieved.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules, amendments, and repeals are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rules, amendments, and repeals.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed new rules, amendments, and repeals together with their comments on any other aspects of the proposal.

Agriculture Industry Impact

The proposed new rules, amendments, and repeals will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules, amendments, and repeals will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments merely reflect the existence of the proposed new rules. The proposed repeals delete the existing requirements governing the determination of suitability and insurer supervision, which are to be replaced by proposed new N.J.A.C. 11:4-59A. To the extent that the proposed new rules apply to small businesses, they will apply to New Jersey resident producers, New Jersey resident representatives or members of a fraternal benefits society not required to be licensed as insurance producers, and New Jersey domestic insurers as applicable. The new rules’ compliance requirements are described in the proposal Summary above. The economic impact on small businesses is described in the Economic Impact set forth above. As set forth in the Economic Impact, the Department believes that any additional costs that may be imposed on regulated entities is far outweighed by the benefits to be achieved. In addition, as previously noted, the requirements in the proposed new rules reflect the national standard as adopted by the NAIC. No differentiation in compliance requirements is provided based on business size. As noted above, the proposed new rules implement the requirements of the Act related to determining the suitability of an annuity product solicited to a consumer and to insurer supervision of producers’ activities. The requirements and the goals to be achieved by the Act, as noted in the Social Impact, do not vary based on business size.

Housing Affordability Impact Analysis

The proposed new rules, amendments, and repeals will not have an impact on housing affordability in this State in that the proposed new rules, amendments, and repeals relate to the selling of annuities to consumers in this State.

Smart Growth Development Impact Analysis

The proposed new rules, amendments and repeals will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey in that the proposed new rules, amendments, and repeals relate to the selling of annuities to consumers in this State.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:4-59.5 and 59.6.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 2

INSURANCE GROUP

SUBCHAPTER 23. ADVERTISEMENT OF LIFE INSURANCE AND ANNUITIES

11:2-23.5 Disclosure requirements

(a) – (o) (No change.)

(p) On transactions involving the sale of annuities that are subject to the provisions of N.J.S.A. 17B:25-34 et seq., insurers and producers shall comply with all such provisions and with N.J.A.C. 11:4-59, regarding disclosure **requirements**, and **with N.J.A.C. 11:4-59A, regarding** suitability requirements, for such annuities.

CHAPTER 4

ACTUARIAL SERVICES

SUBCHAPTER 59. DISCLOSURE [AND SUITABILITY] REQUIREMENTS FOR
ANNUITIES DIRECTLY SOLICITED TO CONSUMERS

11:4-59.1 Purpose and scope

(a) The purpose of this subchapter is [to set forth the information to be acquired to determine the suitability of an annuity for a consumer and] to prescribe disclosure requirements to be utilized in connection with the sale, solicitation or negotiation of annuities directly to consumers, as required by N.J.S.A. 17B:25-34 et seq. [This subchapter also implements N.J.S.A. 17B:25-38c(1) by establishing minimum

requirements for the system of supervision to be utilized by insurers and producers to ensure compliance with the suitability requirements prescribed by N.J.S.A. 17B:25-38b.]

(b) This subchapter shall apply to any annuity, both immediate and deferred, directly solicited to a consumer, except as specifically excluded pursuant to N.J.S.A. 17B:25-37a [and 17B:25-38a].

11:4-[59.7]**59.5** (No change in text.)

**SUBCHAPTER 59A. SUITABILITY AND INSURER SUPERVISION
REQUIREMENTS FOR ANNUITIES DIRECTLY SOLICITED TO
CONSUMERS**

11:4-59A.1 Purpose and scope

(a) **The purpose of this subchapter is to implement N.J.S.A. 17B:25-34 et seq. and 17B:30-1 et seq. 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.**

(b) **This subchapter shall apply to any annuity, both immediate and deferred, directly solicited to a consumer, except as specifically excluded in N.J.S.A. 17B:25-38a and this subchapter. This subchapter also shall apply to any recommendation to purchase, exchange, or replace an annuity made to a consumer**

by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange, or replacement recommended.

(c) Unless otherwise specifically included, this subchapter shall not apply to transactions involving:

1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this subchapter;

2. Contracts used to fund:

i. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA), 29 U.S.C. §§ 1001 et seq.;

ii. 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;

iii. 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;

iv. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

v. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process;

vi. Formal prepaid funeral contracts; and

vii. Any transaction exempt under N.J.S.A. 17B:25-38.

(d) This subchapter shall apply to recommendations made on or after six months after the effective date of the subchapter.

11:4-59A.2 Definitions

Words and terms as defined in N.J.S.A. 17B:25-35, when used in this subchapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise or as further defined in this subchapter. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means N.J.S.A. 17B:25-34 et seq.

“Annuity” means a product as defined at N.J.S.A. 17B:17-5 that is individually solicited, whether the product is classified as an individual or group annuity.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Continuing education credit” or “CE credit” means one continuing education credit as defined in N.J.A.C. 11:17-3.

“Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to N.J.A.C. 11:17-3.

“Department” means the New Jersey Department of Banking and Insurance.

“FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.

“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, exchange, or replacement of an annuity in accordance with that advice.

“Replacement” means 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 the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

1. Lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer or otherwise terminated;
2. 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;
3. 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. Reissued with any reduction in cash value; or
5. Used in a financed purchase.

“Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

1. Age;
2. Annual income;
3. Financial situation and needs, including the financial resources used for the funding of the annuity;

4. **Financial experience;**
5. **Financial objectives;**
6. **Intended use of the annuity;**
7. **Financial time horizon;**
8. **Existing assets, including investment and life insurance holdings;**
9. **Liquidity needs;**
10. **Liquid net worth;**
11. **Risk tolerance;**
12. **Tax status; and**
13. **Any other factors set forth in N.J.S.A. 17B:25-38b not referenced or subsumed in the factors set forth in 1 through 12 above.**

11:4-59A.3 Duties of insurers and of 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, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following, which are intended to**

supplement and not replace the requirements for disclosure set forth in N.J.A.C. 11:4-59:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;

2. The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;

3. 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 (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including 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 consumer would benefit from product enhancements and improvements; and

iii. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(b) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(c) Except as permitted under (d) below, an insurer shall 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.

(d) Neither an insurance producer, nor an insurer, shall have any obligation to a consumer under (a) or (c) above related to any annuity transaction if any of the following listed below in (d)1 through 4 exist, except that an insurer's issuance of an annuity shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued:

- 1. No recommendation is made;**
- 2. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;**
- 3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or**
- 4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.**

(e) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

- 1. Make a record of any recommendation subject to (a) above;**
- 2. Obtain a statement signed by the customer documenting a customer's refusal to provide suitability information, if any; and**
- 3. Obtain a statement signed by the customer acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.**

(f) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this subchapter, including, but not limited to, the following:

- 1. The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this subchapter and shall incorporate the requirements of this subchapter into relevant insurance producer training manuals;**
- 2. The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of N.J.A.C. 11:4-59A.4;**
- 3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;**

4. The insurer shall maintain 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;

5. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. These may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this paragraph shall prevent an insurer from complying with this paragraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

6. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(g) Nothing in (f) above shall restrict an insurer from contracting for performance of a function (including maintenance of procedures) required under (f) above. An insurer is responsible for taking appropriate corrective action and may

be subject to sanctions and penalties pursuant to N.J.A.C. 11:4-59A.6 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with (g)1 below.

1. An insurer's supervision system under (f) above shall include supervision of contractual performance under that subsection, which shall include, but not be limited to, the following:

i. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

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.

(h) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

(i) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(j) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements

under this subchapter. 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 shall be construed to limit the Commissioner's ability to enforce (including investigate) the provisions of this subchapter.

1. For this subsection to apply, an insurer shall:
 - i. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
 - 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.

11:4-59A.4 Insurance producer training

(a) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(b) An insurance 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 a Department-approved education provider.

(c) Insurance producers who hold a life insurance line of authority on the effective date of this subchapter and who desire to sell annuities shall complete the requirements of this section within six months after the effective date of this subchapter. Individuals who obtain a life insurance line of authority on or after the effective date of this subchapter may not engage in the sale of annuities until the annuity training course required under this section has been completed.

(d) The minimum length of the training required under this section shall be sufficient to qualify for at least four CE credits, but may be longer.

(e) The training required under this section shall include information on the topics set forth in the outline below:

1. The types of annuities and various classifications of annuities;
2. Identification of the parties to an annuity;
3. How fixed, variable, and indexed annuity contract provisions affect consumers;
4. The application of income taxation laws and Internal Revenue Code provisions to qualified and non-qualified annuities;
5. The primary uses of annuities; and
6. Appropriate sales practices, replacement, and disclosure requirements.

(f) Providers of courses intended to comply with this section 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.

(g) A provider of an annuity training course intended to comply with this section shall register as a CE provider in this State and comply with the rules applicable to insurance producer continuing education providers and courses as set forth in N.J.A.C. 11:17-3.

(h) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with N.J.A.C. 11:17-3.

(i) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with N.J.A.C. 11:17-3.

(j) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this section shall be deemed to satisfy the training requirements of this section in this State.

(k) An insurer shall verify that an insurance producer has completed the annuity training course required under this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided by Commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

11:4-59A.5 Recordkeeping

(a) Insurers, general agents, independent agencies, and insurance producers 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 10 years after the insurance transaction is completed by the insurer. An insurer may, but shall not be required, to maintain documentation on behalf of an insurance producer.

(b) Records required to be maintained by this subchapter may be maintained in paper, photographic, micro-process, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

11:4-59A.6 Compliance mitigation; penalties

(a) An insurer shall be responsible for compliance with this subchapter. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the Commissioner may order:

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

3. Appropriate penalties and sanctions pursuant to law, including penalties as authorized pursuant to N.J.S.A. 17B:25-42.