

Draft: 04/04/17  
Model #275

## SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

### Table of Contents

Section 1.	Purpose
Section 2.	Scope
Section 3.	Authority
Section 4.	Exemptions
Section 5.	Definitions
Section 6.	Duties of Insurers and <del>Insurance</del> Producers
<del>Section 7.</del>	<del>Prohibited Transactions</del>
Section <del>7</del> 8.	<del>Insurance</del> Producer Training
Section <del>8</del> 9.	Compliance Mitigation; Penalties
Section <del>9</del> 10.	<del>{Optional}</del> Recordkeeping
Section <del>10</del> 11.	Effective Date

### Iowa Comment:

*Iowa suggests that revisions to this regulation ought to increase consumer protection without restricting consumer choice in retirement security. Consumers access retirement security through a range of insurance and financial professionals. These choices include professionals with insurance producer licensure, securities broker-dealer licensure, state or federal covered investment adviser licensure, and any combination of these licenses. Some consumers choose professionals with relevant professional certifications and designations who offer fee-based financial planning or insurance adviser services under advisory or consulting agreements. Other consumers choose to access retirement security through their local independent insurance agent or a career insurance company agent, either who may offer professional advice incidental to transaction-based compensation arrangement. One design is not appropriate for every consumer.*

*It is also the consumer's choice whether to choose an insurance or financial professional with a fee-based or an investment management relationship and this choice is relevant to a suitable recommendation for that particular consumer. For other consumers, and for some recommendations within a retirement security plan for consumers in a fee-based adviser relationship, a single commission or fee arrangement may be the consumer's preference and would be more consistent with the particular consumer's financial situation, objectives and needs.*

*The NAIC in this model regulation should seek to harmonize with the fee-based investment management requirements of both federal covered and state licensed investment advisers and the suitability and disclosure requirements over transaction-based recommendations and compensation of broker-dealer agents. The Iowa Insurance Commissioner also regulates securities broker-dealers, securities agents, investment advisers and investment adviser representatives under the Uniform Securities Act. This dual insurance and securities regulatory authority is also found in the states of Kansas, Minnesota, Montana, Oregon, South Dakota, Tennessee and Vermont. With dual regulatory authority, we recognize that regulatory harmony is critically important for consumers, licensed professionals, insurers and regulators. But harmony is not the same as uniformity for all insurance and financial professionals.*

*Insurance regulators should be aware that state securities regulators in the past have encouraged the SEC to use its authority under the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 through 15 U.S.C. § 80b-21) and to not act under Section 913(g)(2) of Dodd-Frank to more appropriately address the concerns over conflicted advice. In this manner the SEC may choose to narrow the broker-dealer exclusion under the Investment Advisers Act to preclude those securities agents who "hold themselves out as advisers" and offer personalized investment or retirement planning advice from availing themselves of the exclusion. Although this approach may be preferable to new regulations under Dodd-Frank, avoiding the creation of a whole new body of regulations and guidance documents, it will still need to be carefully designed. Any rule should allow consumers to choose professional retirement advice on a transaction basis without forcing the consumers to pay for unwanted ongoing investment management services.*

*Until such time as the NAIC is able to determine whether the standards of conduct applicable to securities investment advisers, broker-dealers and registered representatives will be changed by the SEC under either the Investment Advisers*

*Act or Dodd-Frank, and if so, what the changes will be, the proposed revisions to the annuity suitability model regulation must remain in draft format.*

*Finally, far more critical than labeling these heightened standards of conduct as “suitability”, “best interest” or “consumer-focused,” the substantive consumer protection duties of insurers and producers under Section 6 of this regulation require careful attention and consideration.*

**Section 1. Purpose**

- A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers [in their best interest / that are suitable], and result in transactions involving annuity products so that the financial situation, insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
- B. This regulation establishes standards of conduct for producers recommending an annuity, including the obligations to act in a competent and trustworthy manner. In order to make a recommendation of an annuity to a consumer that is [suitable for the particular consumer/ in a consumer’s best interest], the producer, or insurer where no producer is involved, must employ a consumer-focused approach.
- C. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

**Drafting Note:** The language of subsection **B-C** comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection **B-C**.

**Drafting Note:** Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 specifically refers to this model regulation as the “Suitability in Annuity Transactions Model Regulation.” Section 989J confirmed the exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirement of the 2010 model.

**Section 2. Scope**

This regulation shall apply to any recommendation or sale of an annuity 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.

**Section 3. Authority**

This regulation is issued under the authority of [insert reference to enabling legislation].

**Drafting Note:** States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

**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;
- (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.

## 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. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, cash benefit, or other remuneration received by producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- ~~BC.~~ “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].
- ~~CD.~~ “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].
- ~~DE.~~ “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
- ~~EF.~~ “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- ~~FG.~~ “Insurance producer” or “producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
- H. “Intermediary” means an entity contracted with an insurer or another intermediary to facilitate the sale of the insurer’s annuities by producers.
- I. “Material conflict of interest” means a financial interest of the producer, or the insurer where no producer is involved, in the sale of an annuity that a reasonable person would expect to influence a recommendation of the producer or insurer, including financial incentives or rewards offered to or received by the producer, or a direct interest or ownership in an insurer by the producer or an immediate family member of the producer.
- J. “Non-cash compensation” means any form of compensation received by producer from an insurer or intermediary in connection with the recommendation or sale of an annuity that is not cash compensation, including but not limited to, entertainment, merchandise, gifts and prizes, travel expenses or meals and lodging, and marketing or advertising expenses.

**K.** “Reasonable cash compensation” means cash compensation that reflects the complexity of the product and the transaction involved, and is not excessive based on the facts and circumstances at the time of the recommendation, known market ranges, and the features and benefits of the product.

**GL.** “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, sale, exchange or replacement of an annuity in accordance with that advice. “Recommendation” does not include general communication to the public, marketing, generalized customer service assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

**HM.** “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.

**Drafting Note:** The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

**IN.** “Suitable” means in the furtherance of a consumer’s objectives and needs under the circumstances then prevailing and based upon the facts disclosed by the consumer, or known at the time of the recommendation by the producer, or insurer where no producer is involved, as to the annuities, insurance, and financial products the producer is authorized to recommend or sell, and as to the consumer’s financial situation, objectives and needs, including the consumer’s suitability information.

**EO.** “Suitability information” means information that is reasonably appropriate to determine whether the suitability of a recommendation is suitable, 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 or financial products, including investment, annuity and ~~life~~ insurance holdings;
- (9) Liquidity needs;
- (10) Liquid net worth;
- (11) Risk tolerance; ~~and~~
- (12) Financial resources used to fund the annuity; and
- ~~(12)~~(13) Tax status.

## Section 6. Duties of Insurers and ~~of Insurance~~ Producers

### Iowa Comment:

*Iowa suggests that we strengthen suitability standards with a process oriented approach. In Section 6 of this Discussion Draft, we have sought to harmonize a standard with the announced intent of the SEC to develop a regulation that may alter some of the traditional distinctions between investment advisers and broker-dealers. The SEC may act under the Investment Advisers Act or Dodd-Frank, but we used as guidance for this Discussion Draft Dodd-Frank Section 913(g)(2), which provides that the SEC “may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice...shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.”*

*“Without regard to the financial interest” cannot mean that the producer’s recommendation must be the choice with lowest annual fee or the lowest single sales commission. To the contrary, professional recommendations ought to be made with a focus on the particular consumer’s financial situation, objectives and needs, and by doing so the producer’s compensation is rendered unimportant.*

*We would recommend that professional advice incidental to a transaction-based recommendation remain a viable consumer choice. If SEC action favors one method of compensation over another, it will have the effect of eliminating consumer choice in obtaining professional services. This will also result in increased costs for many consumers, less access to professional services for many consumers, unsuitable recommendations for some consumers, and less retirement security for Iowans.*

*Iowa believes a suitability standard should be retained due to its effectiveness of consumer protection and established body of law and regulation. But this rule should be strengthened with standards emphasizing the producer’s duties to the particular consumer, disclosure of the producer’s role in any recommended annuity transaction, and disclosure of cash and non-cash compensation.*

- 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 particular 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:~~
  - (1) “Reasonable grounds for believing that a recommendation is suitable” requires competence, trustworthiness, fair dealing, diligence, care and skill by the producer, or the insurer where no producer is involved.
  - (2) These standards shall be applied in a limited manner and scope to the producer’s licensed authority, qualification, and whether the producer is only authorized to recommend a limited range of annuity products or product types.

- (3) These standards require a consumer-focused evaluation, establishing that the recommendation has been made without regard to the producer's compensation. This does not mean that the annuity, insurance or financial product with the lowest one-time or multiple occurrence compensation structure must necessarily be recommended, but the recommendation must be focused on whether the benefits and features of the annuity address the actual financial situation, objectives and needs of the particular consumer.
- (4) These standards require the producer, or insurer where no producer is involved, to orally, or in writing, describe to the consumer the grounds for the recommendation.
- (5) The producer, or insurer where no producer is involved, shall consider all factors including the consumer's suitability information, the product expense, and the stated interest or income payout rate. The factors set forth are generally relevant in making a suitability determination, but the level of importance of each factor may vary depending on the facts and circumstances of a particular case. Factors should not be considered in isolation.

**Drafting Note:** The NAIC in adopting this model regulation intends for interpretation of the requirements in subsection (A) to be in harmony with the principles of FINRA Rule 2111 regarding suitability, Rule 2111's supplementary material and interpretations, and any successor rules.

- B. Prior to the recommendation of an annuity, a producer, or an insurer where no producer is involved, shall do all of the following:
  - (1) Make reasonable efforts to obtain suitability information from the consumer;
  - (2) Consider the types of annuities, insurance, and financial products the producer is authorized to recommend or sell that may align with the consumer's disclosed suitability information and address the consumer's financial situation, objectives and needs; and
  - (3) Disclose to the consumer any limitations the producer or the insurer has in regard to the following:
    - (a) The type of annuities, insurance and financial products that the producer is authorized to recommend or sell;
    - (b) Whether only specific insurer company products or a limited range of annuity products may be offered; and
    - (c) The scope of the producer's licenses.
- C. At or prior to the recommendation of an annuity, the producer, or insurer where no producer is involved, shall disclose to the consumer:
  - (1) Any and all material conflicts of interest;
  - (2) A description of the role of the producer in the transaction;
  - (3) A description of the cash compensation to be received by the producer, or insurer where no producer is involved, including whether compensated for the sale of a recommended annuity by commission as part of premium or by fee as a result of a contract for advice or consulting services. The producer shall disclose either the percentage or a reasonable estimate of the dollar amount of compensation, which may be stated as a range of amounts or values. The producer shall also disclose whether the cash compensation is a one-time or multiple occurrence amount, and if a

multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or values; and

- (4) The type of non-cash compensation that exceeds \$500 per producer per year the producer may receive from an insurer or intermediary that is connected to the sale of the annuity.

D. In making a recommendation, the producer, or insurer where no producer is involved, shall have a reasonable basis to believe all of the following:

- (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, potential changes in nonguaranteed elements of the annuity, insurance and investment components, and market risk;

**Drafting Note:** If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

- (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:
- (a) 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;
- (b) The consumer would benefit from product enhancements and improvements and the replacing product would provide a substantial benefit to the consumer over the life of the product; and
- (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 3660 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.~~

~~CE.~~ Except as permitted under subsection ~~DG~~, 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.

F. Prior to the execution of a purchase, sale, exchange or replacement of an annuity, if no recommendation is made, a producer or the insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

- ~~DG.~~ (1) Except as provided under paragraph (2) of this subsection ~~D~~, neither ~~an insurance a~~ producer, nor an insurer, shall have any obligation to a consumer under subsections ~~A through E~~ 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 suitability information and the annuity transaction is not recommended; or
  - (d) A consumer decides to enter into an annuity transaction that ~~is not based on~~ does not follow the recommendation of the insurer or the insurance producer made.
- (2) An insurer's issuance of an annuity subject to paragraph (1) of this subsection, shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued, and shall include documentation of any recommendation made and the producer's efforts to obtain the consumer's suitability information.
- ~~EH.~~ ~~An insurance A~~ producer, or insurer where no ~~insurance~~ producer is involved, ~~the responsible insurer representative~~, shall at the time of recommendation or sale:
- (1) Make a record of any recommendation and the grounds for the recommendation subject to ~~section 6A of~~ this regulation;
  - (2) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
  - (3) Obtain a customer signed statement 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.
- ~~FI.~~ (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its ~~insurance~~ producers' compliance with this regulation, including, but not limited to, the following:
- (a) The insurer shall maintain reasonable procedures to inform its ~~insurance~~ producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant ~~insurance~~ producer training manuals;
  - (b) 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 section 78 of this regulation;
  - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its ~~insurance~~ producers;



- (d) 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;
  - (e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; ~~and~~
  - (f) The insurer shall maintain reasonable procedures, upon issuance or delivery of an annuity, to detect if a producer has not provided to the consumer the information as required by section 6 of this regulation; and
  - (~~fg~~) 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.
- (2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 89 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
- (b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not 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.
- (3) 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.

GI. ~~An~~Neither a insurance-producer ~~nor insurer~~ 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.

- ~~HJ.~~ (1) Sales made in compliance with FINRA rules 2111 and 3220, and related or successor rules requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if in connection with the sale of the annuity, the broker-dealer and the producer, who is also appropriately registered as a representative with FINRA, have complied with the FINRA standards of conduct applicable ~~the suitability and supervision is similar to those applied~~ to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce ~~(including investigate)~~ the provisions of this regulation.

**Drafting Note:** ~~Non-compliance with~~ Failure of a producer, who is also a licensed securities representative under the supervision of a broker-dealer, to fully comply with FINRA ~~requirements~~ standards applied to all annuity recommendations means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

- (2) For paragraph (1) to apply, an insurer shall:
- (b) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
  - (c) 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.

### **Section 7. Prohibited Practices**

In recommending or selling an annuity to a consumer, a producer, or insurer where no producer is involved:

- (1) Shall receive no more than reasonable cash compensation;
- (2) Shall not make any materially misleading statements regarding the recommended annuity transaction; and
- (3) Shall not state or imply to the consumer that a recommendation is part of financial planning, financial advice, investment adviser, investment management or related services unless the producer has a specific professional certification or designation in that area.

### **Section 78. 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. A ~~n insurance~~ producer may rely on insurer- provided product-specific training standards and materials to comply with this subsection.
- B. (1) (a) A ~~n insurance~~ producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
- (b) ~~Insurance p~~Producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

- (2) 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.
- (3) The training required under this subsection shall include information on the following topics:
  - (a) The types of annuities and various classifications of annuities;
  - (b) Identification of the parties to an annuity;
  - (c) How product specific annuity contract features affect consumers;
  - (d) The application of income taxation of qualified and non-qualified annuities;
  - (e) The primary uses of annuities;
  - (f) Financial exploitation of seniors and other vulnerable adults; and
  - ~~(f)~~(g) Appropriate sales practices, replacement and disclosure requirements, including the requirements under this regulation.
- (4)
  - (a) 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 annuity products. Additional topics may be offered in conjunction with and in addition to the required outline.
  - (b) A training course that complies with the requirements of FINRA Rule 1250 meets the requirements of Paragraph (3).
- (5) 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 insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].
- (6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].
- (7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].
- (8) 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.
- (9) An insurer shall verify that an ~~insurance~~ 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 commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

**Section 89. Compliance Mitigation; Penalties**

- A. An insurer is responsible for compliance with this regulation. 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 a failure to comply with this regulation by the insurer<sup>2</sup>s, an entity contracted to perform the insurer's supervisory duties, or by its insurance~~the~~ producer<sup>2</sup>s if a purchase, sale, exchange or replacement of an annuity by the insurer occurs, violation of this regulation;
  - (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 regulation; and
  - (3) Appropriate penalties and sanctions.
- B. Any applicable penalty under [insert statutory citation] for a violation ~~of this~~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 should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State's statute that authorizes the commissioner to impose penalties and fines.

**Section 910. ~~{Optional}~~ 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, disclosures made to the consumer and other information used in making the recommendations that were the basis for insurance transactions for ~~[insert number]~~six (6) 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.

**Drafting Note:** States should review their current record retention laws ~~and specify a time period that is consistent with those laws. For some States this time period may be five (5) years for consistency with Subsection A above.~~

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

**Drafting Note:** This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

**Section 1011. Effective Date**

The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on [insert date], whichever is later.