

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-230

Filing ID: Office Use Only

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state and zip:	Taylorsville, UT 84129	
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Name:	Phone:	Email:
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Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:
R590-230. Suitability in Annuity Transactions
3. Purpose of the new rule or reason for the change:
The rule is being updated to comply with the federal Dodd-Frank Act. These updates are required to prevent the federal government from preempting the states' regulation of annuities. These standards have been developed by the states and must be adopted as written.
4. Summary of the new rule or change:
The changes clarify that all recommendations by agents and insurers must be in the best interest of the consumer and that agents and carriers may not place their financial interest ahead of the consumers' interest in making a recommendation. They also require agents and carriers to act with "reasonable diligence, care and skill" in making recommendations, and include enhancements to the current rule's supervision system to assist in compliance.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes do not require any extra or reduced work on the part of the state.
B) Local governments:
There is no anticipated cost or savings to local governments. This rule governs the relationship between the department and its licensees, and does not affect local governments in any way.
C) Small businesses ("small business" means a business employing 1-49 persons):
Producers will have to take an updated continuing education (CE) course as a result of these changes, but the hours count toward the CE that they're already required to take. There may be a cost for such a course, but this updated CE course would take the place of another course that they would pay for anyway. Effectively, there will be a net-zero cost to producers, including insurance agencies that pay the costs of their agents' CE courses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The only non-small businesses that will be impacted by these changes are insurers. However, Utah is the 44th state to adopt the standards. All insurers who write annuities are already complying with the standards in other states. There should be no additional impact.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Producers will have to take an updated CE course as a result of these changes, but the hours count toward the CE that they're already required to take. There may be a cost for such a course, but this updated CE course will take the place of another course that they would pay for anyway. Effectively, there will be a net-zero cost to producers.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. As stated above, insurers that must comply with this rule are already complying in 43 other states, so complying in Utah will not require any additional cost; producers will be required to take an updated CE course, but this course will replace another required course.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-22-425	

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	12/01/2023	
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):

To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

9. This rule change MAY become effective on:	12/08/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	10/16/2023
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R590. Insurance, Administration.

R590-230. Suitability in Annuity Transactions.

R590-230-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-22-425[~~wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.~~]

R590-230-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) ~~[set forth standards and procedures for recommendations 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]~~require a producer to act in the best interest of the consumer when making a recommendation of an annuity; and

(b) require ~~[insurers]~~an insurer to establish and maintain a system to supervise recommendations so the insurance needs and financial objectives of a consumer at the time of the transaction are effectively addressed.

(2) Nothing herein shall be construed to:

~~(a) create or imply a private cause of action for a violation of this rule; or~~

~~(b) subject a producer to civil liability under the best interest standard of care under Section R590-230-4 or under standards governing the conduct of a fiduciary or a fiduciary relationship.~~

~~[~~
R590-230-3. Scope.]

~~[(1)-(3)(a) This rule [shall apply] applies to any sale or recommendation [to purchase, replace, or exchange] of an annuity[made to a consumer by a producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange].~~

~~[(2)(b) Unless otherwise specifically included, this rule [shall] does not apply to [recommendations] a transaction involving: [(a)-(i) a direct response solicitation[s] where there is no recommendation based on information collected from the consumer pursuant to this rule; [and]~~

~~[(b)-(ii) a contract[s] used to fund:~~

~~[(+)(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act~~

~~[(ERISA)]~~ of 1974, as amended;

~~[(ii)]~~(B) a plan described by ~~[Internal Revenue Code (IRC) Sections]~~ Section 401(a), 401(k), 403(b), 408(k), or 408(p), Internal Revenue Code, as amended, if established or maintained by an employer;

~~[(iii)]~~(C) a government or church plan defined in ~~[IRC]~~ Section 414, Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under ~~[IRC]~~ Section 457, Internal Revenue Code; or

~~[(iv)]~~(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

~~[(v)]~~-(iii) a settlement[s] of or an assumption[s] of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

~~[(vi)]~~-(iv) a formal prepaid funeral contract[s].

R590-230-[4]3. Definitions.

~~[In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule]~~ Terms used in this rule are defined in Section 31A-1-301 and Rule R590-93. Additional terms are defined as follows:

~~_____~~ (1) "Annuity" means:

~~_____~~ (a) an annuity as defined in Section 31A-1-301; and

~~_____~~ (b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

~~_____~~ (2) "FINRA" means the Financial Industry Regulatory Authority or its successor.]

~~_____~~ (1) "Annuity" means an insurance product under state law that is individually solicited, whether the product is classified as an individual or a group annuity.

~~_____~~ (2) "Cash compensation" means a discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

~~_____~~ (3) "Comparable standards" means:

~~_____~~ (a) with respect to a broker-dealer and a registered representative of a broker-dealer, applicable Securities and Exchange Commission and Financial Industry Regulatory Authority rules pertaining to best interest obligations and supervision of annuity recommendations and sales including, but not limited to, Regulation Best Interest and any amendments or successor regulations;

~~_____~~ (b) with respect to an investment adviser registered under federal or state securities laws or an investment adviser representative, the fiduciary duties and all other requirements imposed on an investment adviser or an investment adviser representative by contract or under the Investment Advisers Act of 1940 or applicable state securities law including, but not limited to, the Form ADV and interpretations; and

~~_____~~ (c) with respect to a plan fiduciary or a fiduciary, the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Income Security Act or the Internal Revenue Code and any amendments or successor statutes thereto.

~~_____~~ (4) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives including, at a minimum, the following:

~~_____~~ (a) age;

~~_____~~ (b) annual income;

~~_____~~ (c) existing assets or financial products, including investment, annuity, and insurance holdings;

~~_____~~ (d) financial situation and needs, including debts and other obligations;

~~_____~~ (e) financial experience;

~~_____~~ (f) financial objectives;

~~_____~~ (g) insurance needs;

~~_____~~ (h) financial resources used to fund the annuity;

~~_____~~ (i) financial time horizon;

~~_____~~ (j) intended use of the annuity;

~~_____~~ (k) liquidity needs;

~~_____~~ (l) liquid net worth;

~~_____~~ (m) risk tolerance, including willingness to accept non-guaranteed elements in the annuity; and

~~_____~~ (n) tax status.

~~_____~~ (5) "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 representative of a broker-dealer;

~~_____~~ (b) an investment advisor registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

~~_____~~ (c) a plan fiduciary under Section 3(21), Employee Retirement Income Security Act, or fiduciary under Section 4975(e)(3), Internal Revenue Code, or any amendments or successor statutes thereto.

~~_____~~ (6) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

~~_____~~ (7)(a) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.

(b) "Material conflict of interest" does not include cash compensation or non-cash compensation.

(8) "Non-cash compensation" means any form of compensation that is not cash compensation including, but not limited to, health insurance, office rent, office support, and retirement benefits.

(9)(a) "Non-guaranteed element" means a premium, credited interest rate including any bonus, benefit, value, dividend, non-interest based credit, charge, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue.

(b) An element is non-guaranteed if a non-guaranteed element is used in its calculation.

~~(3)~~(10)(a) "Producer" [~~includes an individual producer or agency producer~~] means a person licensed in this state to sell, solicit, or negotiate insurance, including annuities.

(b) "Producer" includes an insurer where no producer is involved.

~~(4)~~(11)(a) "Recommendation" means advice provided by a producer [~~; or an insurer where no producer is involved;~~] to an individual consumer that results, or is intended to result, in a purchase, an exchange, or a replacement [~~or exchange~~] of an annuity in accordance with that advice.

(b) "Recommendation" does not include general communication to the public, generalized customer service assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

~~(5) "Replacement" is as defined in R590-93-3.~~

~~(6) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

~~(a) age;~~

~~(b) annual income;~~

~~(c) financial situation and needs, including the financial resources used for the funding of the annuity;~~

~~(d) financial experience;~~

~~(e) financial objectives;~~

~~(f) intended use of the annuity;~~

~~(g) financial time horizon;~~

~~(h) existing assets, including investment and life insurance holdings;~~

~~(i) liquidity needs;~~

~~(j) liquid net worth;~~

~~(k) risk tolerance; and~~

~~(l) tax status.]~~

R590-230-~~5~~4. Duties of Insurers and of Producers.

~~(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the 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 the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

~~(a) 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. These requirements are intended to supplement and not replace the disclosure requirements of R590-229;~~

~~(b) the consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;~~

~~(c) 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 that the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and~~

~~(d) 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, including death, living or other contractual benefits, or be subject to increased fees, investment advisory fee 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.~~

~~(2) Prior to the execution of a purchase, replacement, or exchange of an annuity resulting from a recommendation, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.~~

~~(3) Except as permitted under Subsection (4), 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.~~

~~(4)(a) Except as provided under Subsection (4)(b), neither a producer nor an insurer shall have any obligation to a consumer under Subsection (1) or (3) related to any annuity transaction if:~~

~~(i) no recommendation is made;~~

- ~~_____ (ii) a recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;~~
- ~~_____ (iii) a consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or~~
- ~~_____ (iv) a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or producer.~~
- ~~_____ (b) An insurer's issuance of an annuity subject to Subsection (4)(a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.~~
- ~~_____ (5) A producer or, where no producer is involved, the responsible insurer representative, shall at the time of sale:~~
- ~~_____ (a) make a record of any recommendation subject to Subsection (1);~~
- ~~_____ (b) obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and~~
- ~~_____ (c) 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 producer's or insurer's recommendation.~~
- ~~_____ (6)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule, including the following:~~
- ~~_____ (i) the insurer shall maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals;~~
- ~~_____ (ii) the insurer shall establish standards for producer product training and shall maintain reasonable procedures to require its producers to comply with the requirements of Section R590-230-6;~~
- ~~_____ (iii) the insurer shall provide product specific training and training materials that explain all material features of its annuity products to its producers;~~
- ~~_____ (iv) 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 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;~~
- ~~_____ (v) the insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subsection prevents an insurer from complying with this subsection by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and~~
- ~~_____ (vi) the insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, that 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.~~
- ~~_____ (b)(i) Nothing in this subsection restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under Subsection (6)(a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section R590-230-7 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Subsection (6)(b)(ii).~~
- ~~_____ (ii) An insurer's supervision system under Subsection (6)(a) shall include supervision of contractual performance under this Subsection. This includes the following:~~
- ~~_____ (A) monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and~~
- ~~_____ (B) annually obtaining a certification from a senior manager, who has responsibility for the contracted functions that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.~~
- ~~_____ (iii) An insurer is not required to include in its system of supervision a producer's recommendations to consumers of products other than the annuities offered by the insurer.~~
- ~~_____ (7) A producer shall not dissuade, or attempt to dissuade, a consumer from:~~
- ~~_____ (a) truthfully responding to an insurer's request for confirmation of suitability information;~~
- ~~_____ (b) filing a complaint; or~~
- ~~_____ (c) cooperating with the investigation of a complaint.~~
- ~~_____ (8)(a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this rule. 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 limit the commissioner's ability to enforce, including investigate, the provisions of this rule.~~
- ~~_____ (b) For Subsection(8)(a) 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.]~~
- ~~_____ (1) Best interest obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer acts in the best interest of the consumer if they satisfy the obligations of this Subsection (1).~~
- ~~_____ (a) Care obligation.~~
- ~~_____ (i) The producer, in making a recommendation shall exercise reasonable diligence, care, and skill to:~~
- ~~_____ (A) know the consumer's financial situation, insurance needs, and financial objectives;~~
- ~~_____ (B) understand the available recommendation options after making a reasonable inquiry into options available to the~~

producer:

(C) have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

(D) communicate the basis or bases of the recommendation.

(ii) The requirements of care obligation:

(A) include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity;

(B) require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives;

(C) include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features; and

(D) only create a regulatory obligation as established in this rule.

(iii)(A) The requirements of care obligation do not:

(I) include analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation;

(II) create a fiduciary obligation or relationship;

(III) mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended; and

(IV) mean the producer has ongoing monitoring obligations, 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.

(B) The producer shall be held to standards applicable to producers with similar authority and licensure.

(iv) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are the factors relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under care obligation may vary depending on the facts and circumstances of a particular case, but each factor may not be considered in isolation.

(v) The care obligation applies to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, rider, and similar product enhancement, if any.

(vi) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes 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 replacing product would substantially benefit the consumer in comparison to the replaced product 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 60 months.

(vii) Nothing in this rule shall be construed to require a producer to obtain a license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including any securities license, in order to fulfill the duties and obligations contained in this rule, if the producer does not give advice or provide services that are otherwise subject to securities laws or engage in another activity requiring other professional licenses.

(b) Disclosure obligation.

(i) Before the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A of the NAIC Suitability in Annuity Transactions Model Regulation:

(A) a description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(B) an affirmative statement on whether the producer is licensed and authorized to sell the following products:

(I) fixed annuities;

(II) fixed indexed annuities;

(III) variable annuities;

(IV) life insurance;

(V) mutual funds;

(VI) stocks and bonds; and

(VII) certificates of deposit;

(C) an affirmative statement describing the insurers the producer is authorized, contracted, appointed, or otherwise able to sell an insurance product for, using the following descriptions:

(I) one insurer;

(II) from two or more insurers; or

(III) from two or more insurers although primarily contracted with one insurer;

(D) a description of each source and type of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of the premium or other remuneration received from the insurer, intermediary, or other producer, or by a fee as a result of a contract for advice or consulting services; and

(E) a notice of the consumer's right to request additional information regarding cash compensation described in Subsection

(1)(b)(ii).

(ii) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:

(A) a reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and

(B) 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 percentages.

(iii) Before or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been 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, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance, and investment components and market risk.

(iv) The requirements of the disclosure obligation shall supplement and not replace the disclosure requirements of Rule R590-229.

(c) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose any material conflict of interest, including a material conflict of interest related to an ownership interest.

(d) Documentation obligation. A producer shall, at the time of recommendation or sale:

(i) make a written record of any recommendation and the basis for the recommendation subject to this rule;

(ii) obtain a consumer signed statement on a form substantially similar to Appendix B of the NAIC Suitability in Annuity Transactions Model Regulation documenting:

(A) a customer's refusal to provide the consumer profile information, if any; and

(B) a customer's understanding of the ramifications of not providing their consumer profile information or providing insufficient consumer profile information; and

(iii) obtain a consumer signed statement on a form substantially similar to Appendix C of the NAIC Suitability in Annuity Transactions Model Regulation acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(e) Application of the best interest obligation. Any requirement applicable to a producer under this Subsection (1) shall apply to each producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

(2) Transactions not based on a recommendation.

(a) Except as provided in Subsection (2)(b), a producer is not obligated to a consumer under Subsection (1)(a) related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) a consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

(iv) a consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(b) An insurer's issuance of an annuity subject to Subsection (2)(a) shall be reasonable under the circumstances known to the insurer at the time the annuity is issued.

(3) Supervision system.

(a) Except as permitted under Subsection (2), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the consumer's financial situation, insurance needs, and financial objectives based on the consumer profile information.

(b) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule. The supervision system shall include at a minimum the items in this Subsection (3)(b).

(i) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals.

(ii) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of Section R590-230-5.

(iii) The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its producers.

(vi)(A) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives.

(B) The 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.

(C) An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

(v)(A) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with Subsections (1), (2), (4), and (5) that may include confirmation of the consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal

monitoring.

(B) Nothing in this Subsection (3)(a)(v) prevents an insurer from complying with this Subsection (3)(a)(v) by applying sampling procedures, or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity.

(vi) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided the consumer the information required under this section.

(vii) The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

(viii)(A) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

(B) The requirements of this Subsection (3)(b)(viii) are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees if those benefits are not based upon the volume of sales of a specific annuity within a limited period.

(ix) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, that 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.

(c)(i) Nothing in Subsection (3) restricts an insurer from contracting for the performance of a function, including maintenance of procedures. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties regardless of whether the insurer contracts for the performance of a function and regardless of the insurer's compliance with Subsection (3)(c)(ii).

(ii) An insurer's supervision system under this Subsection (3) shall include supervision of contractual performance that includes:

(A) monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(B) 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.

(d) An insurer is not required to include in its system of supervision:

(i) a producer's recommendations to consumers of products other than the annuities offered by the insurer; or

(ii) 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.

(4) Prohibited practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

(a) truthfully responding to an insurer's request for confirmation of the consumer profile information;

(b) filing a complaint; or

(c) cooperating with the investigation of a complaint.

(5) Safe harbor.

(a)(i) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this rule.

(ii) This Subsection (5) applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue.

(b) Nothing in Subsection (5)(a) limits the insurer's obligation to comply with Subsection R590-230-4(3), although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c) For Subsection (5)(a) to apply, an insurer shall:

(i) monitor the relevant conduct of the financial professional seeking to rely on Subsection (5)(a) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws using information collected in the normal course of an insurer's business; and

(ii) provide to the entity responsible for supervising the financial professional seeking to rely on Subsection (5)(a), 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.

R590-230-[6]5. Producer Training.

(1) A 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 producer is in compliance with the insurer's standards for product training.

(2)(a)(i) A producer who engages in the sale of annuity products on or after July 1, 2024, shall complete a one-time approved four credit training course.

(ii) A producer who holds a life insurance line of authority before July 1, 2024, and who desires to sell an annuity shall complete the requirements of this subsection within 12 months after July 1, 2024.

(iii) A producer that obtains a life insurance line of authority on or after July 1, 2024, may not engage in the sale of an annuity until the required annuity training is completed.

(b) The minimum length of the training under this Subsection (2) shall be sufficient to qualify for at least four continuing education credits but may be longer.

(c) The training shall include information on the following topics:

- (i) the types of annuities and various classifications of annuities;
- (ii) identification of the parties to an annuity;
- (iii) how product specific annuity contract features affect consumers;
- (iv) the application of income taxation of qualified and non-qualified annuities;
- (v) the primary uses of annuities; and
- (vi) appropriate standards of conduct, sales practices, replacement, and disclosure requirements.
- (d)(i) A provider of a course complying 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.
- (ii) Additional topics may be offered in conjunction with and in addition to the required outline.
- (e) A provider of an annuity course complying with this section shall register as a continuing education provider and comply with Section 31A-23a-202 and Rule R590-142.
- (f) A producer who completed an annuity training course under the provisions of this rule before July 1, 2024, shall, by no later than July 1, 2025, complete either:
 - (i) a new four credit approved annuity training course on appropriate sales practices, replacement, and disclosure requirements under the amended provisions of this rule; or
 - (ii) an additional one-time single credit approved annuity training course on appropriate sales practices, replacement, and disclosure requirements under the amended provisions of this rule.
- (g) An annuity training course may be conducted and completed by classroom or self-study methods.
- (h) Satisfying the training requirements of another state that are substantially similar to the requirements of this subsection shall satisfy the training requirements.
- (i) Satisfying the components of the training requirements of any course or courses with components substantially similar to the requirements of this subsection shall satisfy the training requirements.
- (j)(i) An insurer shall verify that a producer has completed the required annuity training course before allowing the producer to sell an annuity product for that insurer.
- (ii) An insurer may satisfy its responsibility under this Subsection (2)(j) by obtaining certificates of completion of the training course or obtaining reports provided by database systems or vendors, or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

R590-230-[7]6. Compliance Mitigation[~~and~~], Penalties, and Enforcement.

- (1) An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:
- (a) an insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this rule by the insurer[~~s~~], an entity contracted to perform the insurer's supervisory duties, or by [its producer's, violation of this rule]the producer;
 - (b) a general agency, independent agency, or a producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this rule; and
 - (c) appropriate penalties and sanctions.
- (2) Any applicable penalty under Section 31A-2-308 for a violation of this rule may be reduced or eliminated if corrective action for the consumer ~~was~~is taken promptly after a violation ~~was~~is discovered or the violation ~~was~~is not part of a pattern or practice.

R590-230-[8]7. Records.

- ~~[Insurers and producers]~~(1)(a) A licensee shall maintain ~~[or be able to make available to the commissioner]~~records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer.
- (b) An insurer [is permitted, but shall not be required, to]may maintain documentation on behalf of a producer.
- (2) Records required to be maintained by this rule:
- (a) shall be made available to the commissioner upon request; and
 - (b) may be maintained in paper, photographic, micro-process, magnetic, mechanical, electronic media, or by any process that accurately reproduces the actual document.

R590-230-[9]8. [Enforcement]Effective Date.

The ~~[commissioner will begin enforcing the]~~revised provisions of this rule ~~[60 days from the rule's effective date]~~are effective on July 1, 2024.

R590-230-10. Severability.

[If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.]If any provision of this rule, Rule R590-230, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule

shall be given effect without the invalid provision or application.

KEY: insurance, annuity suitability

Date of Last Change: ~~2023~~[~~March 26, 2012~~]

Notice of Continuation: May 23, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-425

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