

**Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION
Division 700-Insurance Licensing
Chapter 1—Insurance Producers**

AMENDED ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under sections 374.040 374.045, 375.013, 375.143 and 376.309.6 RSMo 2000, the director adopts a rule as follows:

20 CSR 700-1.146 Recommendations of Annuities or Variable Life Insurance to Customers (Suitability) is adopted.

A notice of proposed rulemaking containing the text of the amendment rule was published in the *Missouri Register* on January 2, 2008 (32 MoReg 82-84). Changes have been made in the text of the proposed amendment rule, so it is reprinted here. This proposed amendment rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS:

COMMENT #1: C. Bryan Cox, on behalf of ACLI, Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, Kim O'Brien, on behalf of National Association for Fixed Annuities, Eric C. Dupont, on behalf of MetLife, and Mark Rhoads, on behalf of MetLife, expressed support for the National Association of Insurance Commissioners (NAIC) model rule on suitability that is already in effect in 24 states. Mr. Cox noted that 6 other states have an older NAIC model in effect.

RESPONSE: The director recognizes that many states have adopted a version of the NAIC model. However, the NAIC models do not address insurance specific concerns. No changes were made to the rule as a result of this comment.

COMMENT #2: C. Bryan Cox, on behalf of ACLI, commented that life expectancy and health status do not apply to certain product underwriting, particularly deferred and immediate annuities. Those elements are not in the NAIC Suitability in Annuity Transactions Model Regulation and should not be in the state regulation.

RESPONSE: The director agrees with this comment and has modified the rule accordingly.

COMMENT #3: C. Bryan Cox, on behalf of ACLI, commented that the Financial Industry Regulatory (FINRA) model, upon which the department's proposal is based, was written for variable annuities and doesn't work for fixed deferred annuities.

RESPONSE: The director agrees with this comment and recognizes that variable annuities and fixed annuities are fundamentally different products and different factors should be considered when determining whether or not a variable annuity or fixed annuity is suitable for the customer. The director has modified the rule to apply the FINRA model variable annuity standards that also apply to fixed annuities and eliminated those variable annuity standards that do not apply to fixed annuities.

COMMENT #4: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, and Kim O'Brien, on behalf of National Association for Fixed Annuities, commented that section (1)(B) disregards essential differences between insurance products which are securities and insurance products which are not securities. While (1)(B) develops information valuable to securities sales, much of the rule is irrelevant to sales of fixed annuities.

RESPONSE: The director agrees with this comment and recognizes that variable annuities and fixed annuities are fundamentally different products and different factors should be considered when determining whether or not a variable annuity or fixed annuity is suitable for the customer. The director has modified the rule to apply the FINRA model variable annuity standards that also apply to fixed annuities and eliminated those variable annuity standards that do not apply to fixed annuities.

COMMENT #5: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, commented that he is unsure of the meaning of "other covered annuities", and suggested deleting this phrase or identifying the "other covered annuities" to which this section applies.

RESPONSE: The director agrees with this comment. The director eliminated the term "covered annuity" from this rule as well as the definition of "covered annuity" in proposed rule 20 CSR 700-1.005.

COMMENT #6: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, commented that the requirement in (2)(C) to inquire about "life expectancy and health status" is problematic in that individuals generally do not know their life expectancies. Mr. Hoffman also commented that "health status" is vague and largely irrelevant in the sales of annuities and questioned the propriety of asking for specific health information when it is not needed to underwrite an application for the product.

RESPONSE: The director agrees with this comment and has modified the rule accordingly.

COMMENT #7: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, commented that a customer's investment objectives and risk tolerance may be relevant to sales of indexed annuities, that information is not relevant to sales of fixed annuities. Mr. Hoffman suggested that the items listed in (1)(B)2.E. and (1)(B)2.F. not be applied to fixed annuity recommendations.

RESPONSE: The director disagrees with this comment. Information about a customer's investment objectives and risk tolerance are relevant when selling a fixed annuity. Fixed annuity customers tend to be seeking a steady stream of income (an investment objective) and tend to be less risk tolerant. That information is crucial when deciding among various products. No changes have been made to this rule in response to this comment.

COMMENT #8: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, commented that the information required in (1)(B)2.G., "The customer's investment, insurance and financial experience;" is not helpful in making a decision to buy a fixed deferred or immediate annuity.

RESPONSE: The director disagrees with this comment because investment and insurance experience is crucial information when deciding among various products. However, the

director has eliminated the phrase throughout the rule to be consistent with other states' regulations.

COMMENT #9: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, commented that he is uncertain what "financial experience" as distinct from "investment experience" and "insurance experience" in (1)(B)2.G. is intended to mean.

RESPONSE: A customer's experience may vary regarding investments and insurance. A customer's sophistication regarding investment and insurance products will impact the suitability decision. No changes have been made as a result of this comment.

COMMENT #10: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, commented that all subsections referred to "customer", but is unsure whether "customer" refers to the applicant, proposed owner or proposed annuitant when they are not all the same person.

RESPONSE: "Customer" applies to whoever the producer is making the recommendation. No changes have been made to the rule in response to this comment.

COMMENT #11: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, commented that section (1)(C) applies to "all deferred annuities" and that the requirements of the section are not relevant equally to variable, indexed and fixed deferred annuities.

Mr. Hoffman suggests that the section be further divided into either 2 (variable and indexed deferred annuities, and fixed deferred annuities) or 3 (variable, indexed and fixed deferred annuities) subsections, which of which would contain requirements that are applicable to that particular type of annuity. Mr. Hoffman suggests that the following concepts should not apply to fixed deferred annuities: mortality and expense fees; investment components; market risk; and underlying subaccounts.

RESPONSE: The director agrees with this comment and recognizes that variable annuities and fixed annuities are fundamentally different products and different factors should be considered when determining whether or not a variable annuity or fixed annuity is suitable for the customer. The director has modified the rule to apply the FINRA model variable annuity standards that also apply to fixed annuities and eliminated those variable annuity standards that do not apply to fixed annuities. The director has eliminated the concepts suggested by Mr. Hoffman.

COMMENT #12: Gary K. Hoffman, on behalf of Kansas City Life Insurance Company, commented that the requirement that the producer have a reasonable basis to believe that the customer "would" benefit from the features of a deferred annuity in (1)(C)1.A.II. is an impossible standard. The most that can be stated with assurance at the time of sale is that these features are of benefit to most annuity purchasers. Mr. Hoffman suggests changing "would" to "can" or some similar term. Same comment for the "would" in and (1)(C)1.B.II.

RESPONSE: The director disagrees with this comment. The language referenced is consistent with FINRA model language. A contracted benefit is still a benefit, though not yet realized. No changes have been made to the rule as a result of this comment.

COMMENT #13: Kim O'Brien, on behalf of National Association for Fixed Annuities, commented that if the department decides not to adopt the NAIC Suitability Model, the department should incorporate the NAIC Suitability Model provisions that acknowledge the unique differences between fixed and variable annuities for record keeping, suitability determination and supervision and to remove those that are in conflict or incongruent with the determination of suitability and sales of fixed annuities.

RESPONSE: The director agrees with this comment and recognizes that variable annuities and fixed annuities are fundamentally different products and different factors should be considered when determining whether or not a variable annuity or fixed annuity is suitable for the customer. The director has modified the rule to apply the FINRA model variable annuity standards that also apply to fixed annuities and eliminated those variable annuity standards that do not apply to fixed annuities.

COMMENT #14: Eric C. Dupont, on behalf of MetLife, and C. Bryan Cox, on behalf of ACLI, commented that any rule the department adopts should not go beyond the FINRA rules 2310 and 2821.

RESPONSE: The director disagrees with this comment, in part. The director has modified the rule to incorporate the consumer suitability protections outlined in NASD 2821 relevant to deferred variable annuities that also apply to indexed annuities.

COMMENT #15: Eric C. Dupont, on behalf of MetLife, requested that the rule be clarified to require efforts to obtain information regarding life expectancy or health status only in connection with life insurance not annuities.

RESPONSE: The director agrees with this comment and has modified the rule accordingly.

COMMENT #16: Eric C. Dupont, on behalf of MetLife, commented that the term "covered annuity" be accompanied by a reference to 20 CSR 700-1.005(2)(C) to clarify what is considered a covered annuity by Missouri rules.

RESPONSE: The director disagrees with this comment, but has modified the rule to eliminate the term "covered annuity" to reduce confusion.

COMMENT #17: Eric C. Dupont, on behalf of MetLife, suggested that a reference be made to § 375.012, RSMo, to define the term "producer", as it is used through the rule.

RESPONSE: The director agrees with this comment and has modified 20 CSR 700-1.005 to incorporate a definition for "producer" as suggested by Mr. Dupont.

COMMENT #18: Eric C. Dupont, on behalf of MetLife, commented as follows regarding (1)(C)1.A.I. – This section appears to follow FINRA Rule 2821. However, Rule 2821 applies these "recommendation requirements" to deferred variable annuities only.

Extending these requirements to fixed products would impose new burdens on producers in developing their recommendations. This information this section would require to be considered in the recommendation to purchase or exchange a deferred annuity seems to have significant overlap with the suitability requirements contained elsewhere in the rule, as well as with 20 CSR 400-5.400 – Replacement of Life Insurance and Annuities, and 400-5.410 – Disclosure of Material Facts in Annuity Sales. Given the vast amount of

information that must be provided to consumers and numbers considerations that must be undertaken by producers, the department should coordinate the referenced rules with this rule to streamline the process.

RESPONSE: The director agrees with this comment and has modified the rule to eliminate much of the burden for fixed annuities.

COMMENT #19: Eric C. Dupont, on behalf of MetLife, commented that the department should consider the use of the Straight Through Processing (STP) system developed by NAVA and whether STP can help in the efficiency and thoroughness of the information gathering an exchange the accompanies an annuity sale.

RESPONSE: The director considered the STP. The STP appears to apply to company oversight rather than producer recommendations. No changes have been made to the rule in response to this comment.

COMMENT #20: Eric C. Dupont, on behalf of MetLife, commented that the recordkeeping requirements of the NAIC SAT model be used in Missouri because the proposed requirement will require a unique Missouri-only form to be produced, signed, and maintained by producers.

RESPONSE: The director agrees with this comment in part and has modified the rule to eliminate the signature requirement.

COMMENT #21: C. Bryan Cox, on behalf of ACLI, commented that insurance producers should not be expected (nor do they have the expertise required) to evaluate a prospective client's life expectancy and health condition.

RESPONSE: The director agrees with this comment and has modified the rule accordingly.

COMMENT #22: C. Bryan Cox, on behalf of ACLI, commented that the reference to "other covered annuities" in (1)(B) heading is unclear. Mr. Cox recommended that the department delete that phrase in the (1)(B) heading.

RESPONSE: The director agrees with this comment and has modified the rule accordingly.

COMMENT #23: C. Bryan Cox, on behalf of ACLI, recommended that the department delete section (1)(C) All Deferred Annuities, because of the confusion it creates with the other suitability requirements found in section (1)(A) Variable Annuities and Variable Life Insurance, and section (1)(B) Fixed, Indexed or Other Covered Annuities.

RESPONSE: The director agrees with this comment and has modified the rule to ease confusion over which standards apply to different products.

COMMENT #24: C. Bryan Cox, on behalf of ACLI, commented that section (2) Record Keeping, should be replaced with the NAIC Model's record keeping requirements.

RESPONSE: The director agrees with this comment, in part, and has modified the rule to eliminate the signature requirement. Such modification is more consistent with the NAIC model rule record keeping requirements.

COMMENT #25: Kim O'Brien, on behalf of National Association for Fixed Annuities, commented that if the department decides not to adopt the NAIC Suitability Model, the department should incorporate the NAIC Suitability Model provisions that acknowledge the unique differences between fixed and variable annuities for record keeping, suitability determination and supervision and to remove those that are in conflict or incongruent with the determination of suitability and sales of fixed annuities.

RESPONSE: The director agrees with this comment and has modified the rule accordingly.

(1) **The standards of conduct codified in this rule reflect the professionalism of a licensed insurance producer.** Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

(A) Variable Annuities and Variable Life Insurance.

1. In recommending to an individual customer the purchase, sale or exchange of any variable life or variable annuity product, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other investment holdings and as to his financial situation and needs.

[(B)] 2. Prior to the execution of a variable life or variable annuity transaction recommended to an individual customer, a producer shall make reasonable efforts to obtain information concerning—

[1.]A. The customer's financial status, **including annual income, financial situation and needs, and existing assets;**

[2.]B. The customer's tax status;

C. [3.] The customer's *[insurance and investment]* **financial objectives, including investment objectives, reasonably anticipated income needs and risk tolerance;**

D. [4.] The customer's **investment time horizon, liquid net worth and** current and reasonably anticipated needs for liquidity; and

[5.]E. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

[(C)] *No person shall materially aid any other person in any violation or failure to comply with any standard set forth in this rule.*

3. No producer shall recommend to any customer the purchase or exchange of any deferred variable annuity, unless the producer has a reasonable basis to believe:

A. That the transaction is suitable in accordance with this rule and, in particular, that there is a reasonable basis to believe that—

(I) The customer has been informed, in general terms, of various features of deferred variable annuities, such as the potential surrender period and surrender charge; potential tax penalty if the customer sells or redeems deferred variable annuities before reaching the age of fifty-nine and one half (59½); mortality and expense fees; investment advisory fees; potential charges for and features of riders; the benefit and investment components of deferred variable annuities; and market risk;

(II) The customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit; and

(III) The particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by this rule; and

B. In the case of an exchange of a deferred variable annuity, the exchange also is consistent with the suitability determination required by subparagraph (1)(A)3.A. of this rule, taking into consideration whether —

(I) The customer would 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 or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);

(II) The customer would benefit from product enhancements and improvements; and

(III) The customer's account has had another deferred annuity exchange within the preceding thirty-six (36) months.

[(2)]4. Interpretation of subsection (1)(A) of this rule shall be guided by judicial and administrative opinions and decisions construing substantially similar requirements of the *[National Association of Securities Dealers (NASD)]* Financial Industry Regulatory Authority (FINRA) or its predecessor organizations.

(B) Indexed Annuities.

1. In recommending to an individual customer the purchase, sale or exchange of a indexed annuity, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his or her insurance and investment holdings and as to his or her current and reasonably anticipated financial situation and needs.

2. Prior to the execution of a indexed annuity transaction recommended to an individual customer, a producer shall make reasonable efforts to obtain information concerning—

A. The customer's financial status, including annual income, financial situation and needs, and existing assets;

B. The customer's tax status;

C. The customer's financial objectives, including investment objectives, reasonably anticipated income needs and risk tolerance;

D. The customer's investment time horizon, liquid net worth, and current and reasonably anticipated needs for liquidity; and

E. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

3. No producer shall recommend to any customer the purchase or exchange of a deferred indexed annuity unless the producer has a reasonable basis to believe:

A. That the transaction is suitable in accordance with this rule and, in particular, that there is a reasonable basis to believe that –

(I) The customer has been informed, in general terms, of various features of deferred annuities, such as the potential surrender period and surrender charge; potential tax penalty if a customer sells or redeems deferred indexed annuities before reaching the age of 59 ½; mortality and expense fees; potential charges for and features of riders; the benefit and accumulation components of deferred indexed annuities; and market risk;

(II) The particular deferred indexed annuity as a whole, the underlying accumulation provisions and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by this rule; and

B. In the case of an exchange of a deferred indexed annuity, the exchange also is consistent with the suitability determination required by subparagraph (1)(B)3.A. of this rule, taking into consideration whether –

(I) The customer would 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 or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);

(II) The customer would benefit from product enhancements and improvements; and

(III) The customer's account has had another deferred annuity exchange within the preceding thirty-six (36) months.

(C) Fixed Annuities.

1. In recommending to an individual customer the purchase, sale or exchange of a fixed annuity, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his or her insurance and investment holdings and as to his or her current and reasonably anticipated financial situation and needs.

2. Prior to the execution of a fixed annuity transaction recommended to an individual customer a producer shall make reasonable efforts to obtain information concerning –

A. The customer's financial status, including annual income, financial situation and needs, and existing assets;

B. The customer's tax status;

C. The customer's financial objectives, including investment objectives, reasonably anticipated income needs and risk tolerance;

D. The customer's investment time horizon, liquid net worth and current and reasonably anticipated needs for liquidity; and

E. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

(2) The standards of conduct in this rule shall not apply to the following:

(A) Unless a producer is making a recommendation to an individual plan participant, any annuity used to fund:

1. An employee pension or welfare benefit plan that is covered by ERISA;

2. Any tax-qualified, employer sponsored retirement or benefit plan that meets the requirements of Internal Revenue Code Sections 401(a), 401(k), 403(b), 408(k) or 408(p);

3. Any government or church plan that meets the requirements of Internal Revenue Code Section 414;

4. Any government or church welfare benefit plan, or any deferred compensation plan of a state or local government or tax exempt organization, that meets the requirements of Internal Revenue Code Section 457;

5. Any nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; or

(B) Any annuity transaction used to fund settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

(3) Record Keeping. The determinations required by this rule shall be documented by the producer recommending the transaction.

(4) No person shall materially aid any other person in any violation or failure to comply with any standard set forth in this rule.