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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

| | |
|---|---|
| **Agency/Board/Commission:** | Tennessee Department of Commerce and Insurance |
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**Revision Type (check all that apply):**

X Amendment
X New
___ Repeal

___ Content based on previous emergency rule filed on ___________
___ Content is identical to the emergency rule

**Rule(s)** (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

| Chapter Number | Chapter Title |
|---|---|
| 0780-01-86 | Suitability in Annuity Transactions |
| **Rule Number** | **Rule Title** |
| 0780-01-86-.01 | Purpose |
| 0780-01-86-.02 | Scope |
| 0780-01-86-.03 | Authority |
| 0780-01-86-.04 | Exemptions |
| 0780-01-86-.05 | Definitions |
| 0780-01-86-.06 | Duties of Insurers and Producers |
| 0780-01-86-.07 | Producer Training |

| | |
|---|---|
| 0780-01-86-.08 | Compliance Mitigation; Penalties; Enforcement |
| 0780-01-86-.09 | Recordkeeping |
| 0780-01-86-.10 | Effective Date |
| Appendix A | Insurance Agent (Producer) Disclosure for Annuities |
| Appendix B | Consumer Refusal to Provide Information |
| Appendix C | Consumer Decision to Purchase an Annuity Not Based on a Recommendation |

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/products/division-publications/rulemaking-guidelines.

Chapter 0780-01-86
Suitability in Annuity Transactions
Amendments

Rule 0780-01-86-.01 Purpose is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.01 Purpose.

(1) The purpose of this Chapter is to require producers, as defined in this Chapter, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this Chapter or to subject a producer to civil liability under the best interest standard of care outlined in rule 0780-01-86-.06 of this Chapter or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

Rule 0780-01-86-.02 Scope is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.02 Scope.

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

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

Rule 0780-01-86-.03 Authority is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.03 Authority.

This Chapter is issued under the authority of T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112(a), 56-6-112(d), 56-6-124(a), and 56-8-101 et seq.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

Rule 0780-01-86-.04 Exemptions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.04 Exemptions.

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

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

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(b) 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;

(c) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC; or

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(3) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(4) Formal prepaid funeral contracts.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

Rule 0780-01-86-.05 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.05 Definitions.

(1) "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.

(2) “Cash compensation” means any 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) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.

(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) Financial situation and needs, including debts and other obligations;

(d) Financial experience;

(e) Insurance needs;

(f) Financial objectives;

(g) Intended use of the annuity;

(h) Financial time horizon;

(i) Existing assets or financial products, including investment, annuity, and insurance holdings;

(j) Liquidity needs;

(k) Liquid net worth;

(l) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;

(m) Financial resources used to fund the annuity; and

(n) Tax status.

(5) "Continuing Education Credit" or "CE Credit" means one continuing education credit as defined in rule 0780-01-56.

(6) "Continuing Education Provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to rule 0780-01-56.

(7) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(8) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

(9) "Producer" means a person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. For purposes of this Chapter, "producer" includes an insurer where no producer is involved.

(10) "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.

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

(12) "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.

(13) "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest-based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

(14) "Recommendation" means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange, or a replacement of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(15) "Replacement" means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:

(a) Lapsed, forfeited, surrendered, or partially surrendered; assigned to the replacing insurer; or otherwise terminated;

(b) 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;

(c) 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;

(d) Reissued with any reduction in cash value; or

(e) Used in a financed purchase.

(16) "SEC" means the United States Securities and Exchange Commission.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

Rule 0780-01-86-.06 Duties of Insurers and Insurance Producers is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.06 Duties of Insurers and Producers.

(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 has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest, and documentation:

(a)

1. Care obligation. The producer, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

(i) Know the consumer's financial situation, insurance needs, and financial objectives;

(ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

(iii) 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

(iv) Communicate the basis or bases of the recommendation.

2. The requirements under Part 1. of this subparagraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

3. The requirements under Part 1. of this subparagraph 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. This does not require 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. Producers shall be held to standards applicable to producers with similar authority and licensure.

4. The requirements under this paragraph do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this rule.

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

6. The requirements under Part 1. of this subparagraph 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.

7. The requirements under Part 1. of this subparagraph apply 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, and riders and similar product enhancements, if any.

8. The requirements under Part 1. of this subparagraph do not mean the annuity with the

lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

9. The requirements under Part 1. of this subparagraph do not mean the producer has ongoing monitoring obligations under the care obligation under this subparagraph, 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.

10. In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(i) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty (60) months.

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

(b) Disclosure obligation.

1. Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:

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

(ii) 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;

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

(I) From one insurer;

(II) From two or more insurers; or

(III) From two or more insurers although primarily contracted with one insurer.

(iv) A description of the sources and types 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 premium or other remuneration received from the insurer, intermediary, or other producer or by fee as a result of a contract for advice or consulting services; and

(v) A notice of the consumer's right to request additional information regarding cash compensation described in Part 2. of this subparagraph.

2. Upon request of the consumer or the consumer's designated representative, the producer shall disclose:

(i) 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

(ii) 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.

3. Prior to 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.

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

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

1. Make a written record of any recommendation and the basis for the recommendation subject to this Chapter;

2. Obtain a consumer signed statement on a form substantially similar to Appendix B documenting:

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

(ii) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

3. Obtain a consumer signed statement on a form substantially similar to Appendix C 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 paragraph shall apply to every 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 under subparagraph (b) of this paragraph, a producer shall have no obligation to a consumer under paragraph (1)(a) of this rule related to any annuity transaction if:

1. No recommendation is made;

2. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

3. A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(b) An insurer's issuance of an annuity subject to subparagraph (a) of this paragraph shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(3) Supervision system.

(a) Except as permitted under paragraph (2) of this rule, 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 particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's 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, including, but not limited to, the following:

1. The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this Chapter and shall incorporate the requirements of this Chapter into relevant producer training manuals;

2. 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 rule 0780-01-86-.07;

3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;

4. 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. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

5. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with paragraphs (1), (2), (4), and (5) of this rule. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal

monitoring. Nothing in this part prevents an insurer from complying with this part by applying sampling procedures, or by confirming the consumer profile information or other required information under this Chapter after issuance or delivery of the annuity;

6. 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 to the consumer the information required to be provided under this Chapter;

7. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

8. 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. The requirements of this part are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

9. The insurer shall annually provide a written 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.

(c)

1. Nothing in this paragraph restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this paragraph. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 0780-01-86-.08 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Part 2. of this subparagraph.

2. An insurer's supervision system under this paragraph shall include supervision of contractual performance under this paragraph. 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.

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

1. A producer's recommendations to consumers of products other than the annuities offered by the insurer; or

2. 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) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this rule. This paragraph 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. However, nothing in this paragraph shall limit the commissioner's ability to investigate and enforce the provisions of this rule.

(b) Nothing in subparagraph (a) of this paragraph shall limit the insurer's obligation to comply with subparagraph (3)(a) of this rule, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c) For subparagraph (a) of this paragraph to apply, an insurer shall:

1. Monitor the relevant conduct of the financial professional seeking to rely on subparagraph (a) of this paragraph 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 Tennessee securities laws, using information collected in the normal course of an insurer's business; and

2. Provide to the entity responsible for supervising the financial professional seeking to rely on subparagraph (a) of this paragraph, such as the financial professional's broker-dealer or investment adviser registered under federal or Tennessee securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

(d) For purposes of this paragraph, "financial professional" means a producer that is regulated and acting as:

1. A broker-dealer registered under federal or Tennessee securities laws or a registered representative of a broker-dealer;

2. An investment adviser registered under federal or Tennessee securities laws or an investment adviser representative associated with a federal or Tennessee registered investment adviser; or

3. A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

(e) For purposes of this paragraph, "comparable standards" means:

1. With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA 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 rules thereto;

2. With respect to investment advisers registered under federal or Tennessee securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under either the Investment Advisers Act of 1940 or Tennessee securities law, including but not limited to, the Form ADV and interpretations; and

3. With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

Rule 0780-01-86-.07 Insurance Producer Training is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.07 Producer Training.

(1) A producer shall 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. A producer may rely on insurer-provided product-specific training standards and materials to comply with this rule.

(2)

(a)

1. A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider.

2. Producers who hold a life insurance line of authority prior to the effective date of this Chapter and who desire to sell annuities shall complete the requirements of this paragraph within six (6) months after the effective date of this Chapter. Individuals who obtain a life insurance line of authority after the effective date of this Chapter may not engage in the sale of annuities until the annuity training course required under this rule has been completed.

(b) The minimum length of the training required under this paragraph shall be sufficient to qualify for at least four (4) CE credits but may be longer.

(c) The training required under this paragraph shall include information on the following topics:

1. The types of annuities and various classifications of annuities;

2. Identification of the parties to an annuity;

3. How product specific annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;

5. The primary uses of annuities; and

6. Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

(d) Providers of courses intended to comply with this paragraph shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(e) A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this State and comply with the rules and guidelines applicable to producer continuing education courses as set forth in Chapter 0780-01-56.

(f) A producer who has completed an annuity training course approved by the department of commerce and insurance prior to the effective date of these rules, shall, within six (6) months after the effective date of these rules, complete either:

1. A new four (4) credit training course approved by the department of commerce and insurance; or

2. An additional one-time one (1) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider on appropriate sales practices, replacement, and disclosure requirements under this amended Chapter.

(g) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with Chapter 0780-01-56.

(h) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with Chapter 0780-01-56.

(i) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this paragraph shall be deemed to satisfy the training requirements of this rule in this state.

(j) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this paragraph shall be deemed to satisfy the training requirements of this paragraph in this state.

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

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-8-101 et seq.

Rule 0780-01-86-.08 Compliance Mitigation; Penalties; Enforcement is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.08 Compliance Mitigation; Penalties; Enforcement.

(1) An insurer is responsible for compliance with this Chapter. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order, pursuant to statutory authority granting power for such order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this Chapter by the insurer, by its producer, or an entity contracted to perform the insurer's supervisory duties;

(b) A general agency, independent agency, or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this Chapter; and

(c) Appropriate penalties and sanctions.

(2) Any applicable penalty under T.C.A. §§ 56-1-411, 56-2-305, 56-6-112, or 56-8-101, et seq. for a violation of this Chapter may be reduced or eliminated 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.

(3) The authority to enforce compliance with this Chapter is vested exclusively with the commissioner.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

Rule 0780-01-86-.09 Recordkeeping is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-01-86-.09 Recordkeeping.

(1) Insurers, general agents, independent agencies, and 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, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for five (5) 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 a producer.

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

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124(a), 56-8-101 et seq.

0780-01-86-.10 Effective date.

The amendments to this Chapter shall take effect January 1, 2024.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

## APPENDIX A

## INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES

Do Not Sign Unless You Have Read and Understand the Information in this Form.

Date: ________________________

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

First Name: ___________________________ Last Name: ____________________________________

Business\Agency Name: __________________________ Website: _____________________________

Business Mailing Address:_____________________________________________________________

Business Telephone Number: ___________________________________________________________

Email Address:______________________________________________________________________

National Producer Number in [state]:______________________________________________________

CUSTOMER INFORMATION ("You", "Your")

First Name: _______________________________Last Name: _________________________________

What Types of Products Can I Sell You?

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

I offer the following products:

□ Fixed or Fixed Indexed Annuities

□ Variable Annuities

□ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

□ Mutual Funds

□ Stocks/Bonds

□ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

□ Annuities from Only One Insurer □ Annuities from Two or More Insurers

□ Annuities from Two or More Insurers although I primarily sell annuities from: ____________________

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

□ Commission, which is usually paid by the insurance company or other sources. If other sources, describe:

______________________.

□ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

□ Other (Describe):______________________________________________.

If You have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

______________________________________
Customer Signature

______________________________________
Date

______________________________________
Agent (Producer) Signature

______________________________________
Date

APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form.

Why are You being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives, and situation, the agent, broker, or company needs information about You, Your financial situation, insurance needs, and financial objectives.

If You sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives, and situation. You may lose protections under the Insurance Code of Tennessee if You sign this form or provide inaccurate information.

Statement of Purchaser:

□ I refuse to provide this information at this time.

□ I have chosen to provide limited information at this time.

________________________________________
Customer Signature

________________________________________
Date

## APPENDIX C

### Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

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

Why are You being given this form?

You are buying a financial product – an annuity.

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

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

Statement of Purchaser:

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

________________________________________
Customer Signature

________________________________________
Date

________________________________________
Agent/Producer Signature

________________________________________
Date

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/other authority) on 11/18/2022 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/03/2022

Rulemaking Hearing(s) Conducted on: (add more dates). 08/04/2022

Date: Nov 18, 2022

Signature: Carter Lawrence (Nov 18, 2022 14:25 CST)

Name of Officer: Carter Lawrence

Title of Officer: Commissioner of the Tennessee Department of Commerce and Insurance

---

Agency/Board/Commission: Tennessee Department of Commerce and Insurance

Rule Chapter Number(s): 0780-01-86

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Jonathan Skrmetti
Attorney General and Reporter

Jan. 6, 2023
Date

**Department of State Use Only**

Filed with the Department of State on: 1/17/2023

Effective on: 4/17/2023

RECEIVED

Jan 17 2023, 3:25 pm

Secretary of State
Division of Publications

Tre Hargett
Secretary of State

**Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

Comments from Benjamin Sanders-Executive Director of Government Affairs-Farm Bureau Insurance

1. Commented that the definition of "material conflict of interest" in rule 0780-01-86-.05 should mean what a reasonable person would expect and requests the Department to clarify what is reasonable in determination of whether a "material conflict of interest" exists.

   Department Response
   It is the Department's position that a non-controlling ownership interest in shares of a company could represent a "material conflict of interest" when considered in conjunction with other factors such as membership on a company board or ownership of stock by a family member or spouse. The Department plans to issue a bulletin further clarifying this position in the near future.

2. Commented that the Department should clarify that the definition of "recommendation" in rule 0780-01-86-.05 does not include informal conversations between an agent and customer if involving general information about annuities and that does not include an official recommendation. Wants clarification that such informal conversations do not have to be summarized in writing by the agent and states that the Department could clarify this by Bulletin instead of amending the rules.

   Department Response
   The Department agrees that general information communicated to an individual by a producer about annuity products does not necessarily constitute a "recommendation" as defined in the rule. The Department plans to issue a bulletin further clarifying this position in the near future.

3. Commented that rule 0780-01-86-.06(1)(b), which requires certain disclosure forms to be "substantially similar" to the new appendices added to the Chapter, should be amended to give companies flexibility to develop and format these forms. It is their belief that companies should not be required to have a "one size fits all" type of form and should have the discretion to develop and utilize forms that best serve the consumer. Lengthy disclosure forms may disincentive their customers from annuity transactions.

   Department Response
   The Department has determined that the requirement for disclosure forms to be "substantially similar" to the appendices is not overly burdensome. The disclosure forms do not have to be identical to the format of the appendices.

4. Compensation Disclosure Obligation-rule 0780-01-86-.06(1)(b)

   a. Commented that the compensation disclosure obligations at rule 0780-01-86-.06(1)(b)1.(iv)-(v) requiring producers to disclose the producer's compensation information should be moved to 0780-01-86-.06(1)(b)2. with other disclosure obligations for reader ease.

      Department Response
      The Department has determined that the rule is easily understood as written.

   b. Commented that they do not support the compensation disclosure obligation. They do not think that knowing the compensation information helps consumer to make a more informed decision regarding the annuity transaction. The compensation disclosure information is also not needed to create transparency or to encourage producer honesty in the business of annuity transactions because producers already have a moral, ethical, and legal obligation to recommend products in the best interest of the consumer regardless of compensation. Commented that the compensation disclosure obligation may be better applicable to a brokerage house or financial advice firm but that the obligation should not apply to a captive agency force that sells producers for only one property and casualty insurance company. Commented that the compensation disclosure would be an awkward business practice when such agents are working with consumers. The disclosure by the agent of the annuity transaction compensation would likely lead to more questions about the agent's compensation for the life, auto, or homeowner products. Such awkward business transactions might deter their customers and leave such consumers with only an online option since many of their customers are located in rural areas and may not have any other "in-person" agent options and that online purchases would not be beneficial to the consumer.

Department Response
The Department has determined that the compensation disclosure obligation is not overly burdensome and declines to make any changes regarding the obligation.

5. Comment on rule 0780-01-86-.06(1)(d) regarding the documentation obligation. Comment includes request for additional language to be added to the rule clarifying that producers are not required to retain consumer and financial data for consumers when a recommendation does not end in a sale. Their position is that the producer would have some unwanted liability in maintaining confidential information for persons who are not customers and also believe that consumers would not want producers to retain such information in the absence of a customer relationship.

   Department Response
   The Department has determined that the rule sufficiently defines the requirement and is not overly burdensome.

6. Comment on rule 0780-01-86-.06(3) regarding the Supervision System requirements. Commented specifically on the portion of the rule that requires the producer or insurer to maintain and establish procedures to identify suspicious consumer refusals to provide profile information and stated they don't believe this is a consumer-friendly provision. After discussion with ACLI, it is their understanding that the intent of the language is to identify producers who don't receive certain consumer data on a continuous basis. Comment is that the language should be amended to clarify that the intent of the rule is to identify suspicious producer activity as opposed to suspicious consumer activity.

   Department Response
   The Department has determined that the rule is easily understood as written.

7. Comment on rule 0780-01-86-.06(3)(b)9 regarding the requirement that insurers provide an annual written report to the insurer's senior management for audit functions. Comment is that the report should not be required to be written because producers and agencies currently report such information to senior management on a regular basis and requiring the information to be compiled in a written report will require a large amount of work that has no tangible benefit to the consumers or Department. They believe it would take an employee a minimum of a week of full-time work each year to provide such a written report.

   Department Response

   It is the Department's position that the format of the report is less important than whether the proper information is fully conveyed so that senior management can determine whether the insurer's supervision system complies with these rules. The Department plans to issue a bulletin further clarifying this position in the near future.

8. Comment on rule 0780-01-86-.06(3)(b)8, regarding the prohibition of certain sales contests. They understand a prohibition of incentives that are solely based on the sale of a specific type of annuity in a specific time period. Their request is to add language to this rule stating that the incentives are not allowed if they would be incentive to make recommendations that are not suitable for the consumer. They also believe that this issue could also be clarified by Department bulletin.

   Department Response
   The intent of this rule is to prohibit sales incentives that are based solely on sales of specific annuities, not to prohibit the sales of annuities within a broad range of products involved in a sales-incentive campaign. The Department plans to issue a bulletin further clarifying this position in the near future.

9. Comment on rule 0780-01-86-.09 regarding record keeping requirements for producer and insurers. They object to the requirement that oral disclosures be summarized in writing and recorded and retained. They would like clarification regarding exactly what oral disclosures must be summarized in writing and their stance is that producers should not have to type a transcript for every word spoken by a producer to a consumer regarding annuity transactions.

Department Response
The Department has determined that the record keeping requirement is not overly burdensome and that oral disclosures made and used in making a recommendation do not have to be transcribed exactly. The Department declines to make any changes regarding the requirement.

10. Comment on rule 0780-01-86-.07(2)(f) regarding the producer-training requirement becoming effective six (6) months after the effective date of the rules. Their producers are on a 24-month continuing education and license renewal cycles. Their producers will be required to complete the annuity training at a time that is off cycle from their other continuing education and license renewal cycles. They request some flexibility in the rule on the timing for the training requirement becoming effective.

Department Response
The Department has determined that the producer annuity training being required within six (6) months of the effective date of the rules is not overly burdensome. Additionally, the Department added new rule 0780-01-86-.10 to clarify that the rules become effective on January 1, 2024. A third-party vendor, not the Department, provides training courses for insurance producers. The vendor is currently providing the four (4) credit training course as required by these rules for producers in at least twenty-eight (28) other states. Farm Bureau can coordinate with that vendor regarding a customized training course for eligible Farm Bureau agents. However, the Department points out that the customized Farm Bureau-specific training course could possibly be rejected by other state Departments of Insurance if not comparable to what is being offered by the vendor to non-Farm Bureau producers.

11. Comment on the requirement that insurers will be required to have forms edited to comply with these rules within six (6) months of the effective date of the rules. This is difficult for their company with five hundred (500) agents and two hundred (200) offices because the forms have to run through the entire IT programming system at the home office and be distributed in a uniform way to all agents. Their company has already completed the form review process for 2023 and is working on 2024 initiatives now. They estimate that the resources that will be required for their company to comply with these rules in the required time period will take a cross discipline team a month of full-time work, and the process will be burdensome and may undo some initiatives they have already taken in the work done for the year 2023 and could distract from other consumer services being provided by their company and agents. They would like to request some flexibility with the compliance deadline for the forms that will be required to be created and/or edited in order to comply with these rules.

Department Response
The Department has determined that the forms requirements are not overly burdensome and that compliance upon the effective date of the rules is required. Additionally, the Department added new rule 0780-01-86-.10 to clarify that the rules become effective on January 1, 2024, providing additional time for insurers to comply.

Comments from Laura Leigh Latta-American Council of Life Insurers

12. Commented to express the American Council of Life Insurers' support for these rules. The NAIC Model regulation was developed over the course of several years, with the input of countless stakeholders representing both industry and consumer interests. It was finalized in 2020 and represents one of NAIC's most important consumer protection initiatives to date. By adopting enhanced, consumer-focused best interest obligations for financial professionals, regulators took a significant step toward improving protections for consumers across the country who seek guaranteed lifetime income in retirement. The NAIC Model, from which the language of the rules is derived, was meant to respond to widespread criticisms and concern regarding annuity sales practices. The Model incorporates the best interest standard of care and represents one of the most important consumer protection initiatives of the last several decades. The Model was developed with the input of many stakeholders and protects consumers while being considerate of industry practices. The best interest standard is in conjunction with the best interest standard found in the SEC Model regulation. Twenty-eight (28) states have adopted the Model regulation without deviation or qualification. ACLI is sensitive to the concerns of stakeholders with unique interests in Tennessee and will be willing to discuss any clarification that might be needed to better suit their specific needs. They believe that clarification could be accomplished through Department Bulletin for issues such as the compensation disclosures concerns of Farm Bureau.

Department Response

The Department acknowledges and appreciates the support of ACLI.

13. Commented that the NAIC Model regulation uses the defined term "producer" in replacement of the term "insurance producer" because the term "producer" is broader and incorporates other types of financial professionals. The draft rules generally include the term "producer" but "insurance producer" remains in a few spots and Appendix A is titled "Insurance Agent (Producer) Disclosure for Annuities." We would recommend the term "Producer" be used throughout the rule, consistent with the Model.

Department Response
The Department agrees that the term "producer" should replace the term "insurance producer" throughout the current rules, consistent with the NAIC Model rule.

14. They request that the draft rule replace the term "regulation" with the word "rule" throughout the rule.

Department Response
The Department agrees that the use of certain terms should be used consistently. The Department will use the term "rule" when referencing an individual rule such as rule 0780-01-86-.01, and the term "Chapter" when referencing all of the individual rules within Chapter 0780-01-86.

15. Commented that in rule 0780-01-86-.01(1), the word "require" should be inserted between "to" and "insurers" on the second line.

Department Response
The Department agrees with the comment and the correction has been made.

16. Commented that in rule 0780-01-86-.04(2)(b), the citation for "403" should be "403(b)."

Department Response
The Department agrees with the comment and the correction has been made.

17. Commented that rule 0780-01-86-.04(2)(e) and (2)(f) should be changed to (3) and (4), respectively.

Department Response
The Department agrees with the comment and the correction has been made.

18. Commented on rule 0780-01-86-.05(15), which includes the definition of the term "replacement," stating that the phrase "if there is no producer" should be deleted. The correct language is: "...and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved..." The underlined phrase, which conforms to the Model, strengthens consumer protection by making the proposing insurer liable for any violation involving replacement, regardless of a producer's involvement. ACLI supports this strengthened obligation on the part of insurers for the protection of consumers.

Department Response
The Department agrees that that phrase "if there is no producer" in rule 0780-01-86-.05(15), which includes the definition of the term "replacement," should be deleted, which is consistent with the NAIC Model rule.

19. Regarding rule 0780-01-86-.05(15) and the definition of the term "replacement," the correct wording of the first sentence, in alignment with the NAIC Model, is "'Replacement' means a transaction in which a new annuity is to be purchased,..." The draft rule inadvertently retains the "policy or contract" language from the current rule.

Department Response
The Department agrees with the comment and the correction has been made, which is consistent with the NAIC Model rule language.

20. Commented that rule 0780-01-86-.06 (1)(a)7. contains a typo which is also contained in the Model. The typo is the word "producer." The correct wording is: "...and riders and similar product enhancements, if any."

Department Response
The Department agrees with the comment and the correction has been made.

21. Commented that rule 0780-01-86-.06(1) has two subsections labeled (b): "Disclosure obligation" and "Conflict of interest obligation." "Conflict of interest obligation" should be labeled (c) and "Documentation obligation" should be labeled (d).

Department Response
The Department agrees with the comment and the correction has been made, which is consistent with the NAIC Model rule language.

22. Commented that in rule 0780-01-86-.06(3)(a), the first line should read as follows: (a) Except as permitted under Subsection (2)..." Per the Model, the reference should be to the entire content of "Transactions not based on a recommendation," which is Subsection (2), not just subparagraph (b).

Department Response
References in the Model to a Subsection are replaced with the term "Paragraph" in the proposed rules as is consistent with the outline structure of the current rules. The Department agrees with the comment and the correction has been made, which is consistent with the NAIC Model rule language to capture the entire content of "Paragraph (2)."

23. Commented that in rule on 0780-01-86-.06(5)(a), the phrase "insurance commissioner" should be replaced by the defined term "Commissioner" [Section 0780-01-86-.05(3)].

Department Response
The Department agrees with the comment and the correction has been made, which is consistent with the NAIC Model rule language.

24. Commented that the rule's specific adoption date has yet to be confirmed. ACLI would ask that the effective date be at least six (6) months following the final adoption date of the rule.

Department Response
The Department added new rule 0780-01-86-.10 to clarify that the rules become effective on January 1, 2024.

25. Commented that rule 0780-01-86-.07(2)(a)2. is ambiguous as to the deadline by which producers who get their license on the actual effective date of the rule need to complete their producer training. The current draft states that "Insurance producers who hold a life insurance line of authority on the effective date of this Chapter and who desire to sell annuities shall complete the requirements of this paragraph within six (6) months after the effective date of this Chapter." Yet the next sentence states that: "Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter...." Thus, if an individual obtains a license on the actual effective date of the updated rule, it is unclear whether he/she has an additional six months after the effective date to complete producer training or now.

If Tennessee does not want to give producers who get their license on the actual effective date of the rule additional time to comply with the new training, then Section 0780-01-86-.07(2)(a)2 needs to be amended to state: "Producers who hold a life insurance line of authority prior to the effective date of this chapter..." and the sentence "...Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter..." may be left as currently drafted.

If Tennessee allows producers who obtain a license on the effective date of the rule an additional six months to complete training, then Section 0780-01-86-.07(2)(a)2 needs to keep its first sentence as is: "Producers who hold a life insurance line of authority on the effective date of this chapter...". The sentence "...Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter..." must be amended to delete "on or".

Department Response
The Department has removed the words "on or" from rule 0780-01-86-.07(2)(a)2. This clarifies that a producer that holds a license as of the effective date of the rule will have an additional six (6) months after the effective date to comply with training requirements.

Comments from Bianca Alonso Weiss-State Government Relations Manager, Adam B. Milam-TN President-National Association of Insurance and Financial Advisors (NAIFA), and Matt Benson-NAIFA of Tennessee

26. NAIFA-Tennessee supports the proposed rules and encourages the Department in adopting further safeguards for working class savers to access financial guidance. Since the rulemaking hearing, twenty-eight (28) other states have adopted the Model regulation, with active proposals in eight other states. NAIFA members put their clients' interests first and supports the best interest standard for financial professionals. NAIFA thanks the Department for proposing rules that incorporate the best interest standard regarding suitability in annuity transactions. NAIFA represents 20,000 licensed producers and financial advisors across the country and has 435 members in Tennessee. Annuities are complex products and merit a best interest standard of care requirement and these rules strike an appropriate balance between consumer protection, market competition, and regulation. The obligations and responsibilities are clearly defined and following the NAIC Model regulation promotes uniformity and transparency.

Department Response
The Department acknowledges and appreciates the support of NAIFA and NAIFA-Tennessee.

Comments from Sarah E. Wood-Director of State Policy and Regulatory Affairs-Insured Retirement Institute

27. Insured Retirement Institute supports the proposed rule amendments and recommends that no modifications be made that would reduce consumer protection. The Institute requests the Department to allow a new comment period if the Department decides to make changes that substantially deviate from the current rules which are based on the NAIC Model regulation.

Department response
The Department will allow a new comment period if substantive amendments are made to the rules subsequent to the August 4, 2022, rulemaking hearing as required by law.

28. Commented that the definition of "replacement" in rule 0780-01-86-.05 should be amended.

Department Response
The Department agrees and the correction has been made. See Comment No. 18 and 19.

29. Commented that a cross reference citation in rule 0780-01-86-.06(3) appears to include incorrect citation.

Department Response
The Department agrees and the correction has been made. See Comment No. 22.

30. Commented that the effective date for purposes of producers being required to complete the annuity training should be amended.

Department response
The Department has determined that the producer annuity training requirement must be completed within six (6) months of the effective date of the rules and changed the language of the rule to reflect that.

31. Commented that the drafting notes from the newly added appendices be removed.

Department response
The Department agrees and has removed the drafting notes.

Comments of American International Group (AIG)-Butler Snow LLP

32. Commented that "July 1, 2022", should be changed to "6 months from the effective date of the rule" for the producer education requirement.

Department Response
The Department has determined that the producer annuity training requirement must be completed within six (6) months of the effective date of the rules and changed the language of the rule to reflect that.

33. Commented that they would like July 1, 2022, to be changed to "6 months from the effective date of the rule" for the insurer deadline to comply.

Department Response
As currently written, the rules require insurers to be in compliance with the rules on the date they become effective. The Department has now added new rule 0780-01-86-.10 to clarify that the rules become effective on January 1, 2024, providing additional time for insurers to comply.

34. Commented that rule 0780-01-86-06(3)(a) cites incorrectly to subparagraph(b) of that paragraph. We think that should be a cite to (2) (transactions not based on a recommendation), based on how the Model reads.

Department Response
The Department agrees and the correction has been made. See Comment No. 22.

35. Commented on rule 0780-01-86-06(3)(c) of this same section on supervision. We think there is a missing reference to subparagraph 2 at the end of (c)1.

Department Response
The Department agrees and has amended rule 0780-01-86-06(3)(c)1. by replacing the word "paragraph" with "Part 2 of this subparagraph."

Comments of Kim O'Brien-CEO-Federation of Americans for Consumer Choice (FACC)

36. FACC strongly supports the proposed rules and the incorporation of the best interest obligation standard. FACC worked closely with the NAIC working group during the development of the Model rule. The Model is reflective of emerging industry standards and is designed to be compatible with other marketplace requirements such as those developed for the securities industry by the Securities and Exchange Commissioner (SEC). The FACC is aware of concerns that have been raised by certain parties and revisions requested which FACC believes would disturb the careful construct and wording of the Model Regulation and could also call into question the regulation's overall efficacy. FACC urges the Department to refrain from making any changes to the language contained in the Model itself, and to the extent any clarification is needed, consider doing so through separate bulletins or other informal methods.

FACC urges the Department to promulgate the NAIC Model rule without deviation, in order to modernize its insurance regulation, preserve uniformity among states, and promote effective regulation that will best serve both insurance providers and consumers in Tennessee. FACC stands ready to assist the Department or any other parties involved in this process in analyzing the model requirements and working towards adoption of the Model rule.

Department Response
The Department recognizes and appreciates the support of FACC. The Department has made only non-substantial changes in deviation from the Model rule.

Trey Moore-Insurors of Tennessee

37. Insurors of Tennessee is the largest association of insurance producers in the state and represents the industry constituency most impacted by this proposal. For reasons set forth below, our organization opposes the draft rules in its current form. That said, our objections are narrowly focused on a small number of provisions. We have identified these items below and have also outlined possible ways to eliminate or lessen these concerns.

The Department Lacks Clear Legislative Authority to Promulgate The Proposed Rule. As an initial and threshold matter, the proposed revisions to Chapter 0780-01-86 (Suitability in Annuity Transactions) constitutes a level of policymaking that requires – but lacks -- clear authorization from the General Assembly. The draft is a sweeping rewrite of the existing rule and would establish a broad array of new marketplace rules and alter the legal standard of care that insurance professionals owe to their customers, and these vast changes in public policy have no apparent legislative basis.

This is a broad and expansive proposal and one that lacks clear legislative authorization, and we can think of no comparable rulemaking by the Department in the past. This proposal raises important questions about the ability of the Department to impose new and significant requirements and alter existing law (including revisions to the state's common law). Our association has tremendous respect and appreciation for the great work performed by the Department, but we do not support a lawmaking framework in which insurance regulators can unilaterally adopt significant public policy measures without authorization from the General Assembly.

We recognize the National Association of Insurance Commissioners adopted its recommended proposal as a model regulation, but even the drafters acknowledged that regulatory action requires legislative authorization. Specifically, the model includes a drafting note indicating that "[s]tates may wish to use the Unfair Trade Practices Act (UTPA) as enabling legislation or may pass a law with specific authority to adopt this regulation." Despite the recognition that legislative authorization is necessary, the reality is that there is no provision of the UTPA or within the Tennessee Code that could conceivably provide the statutory basis for adopting these proposed revisions.

The Department's proposal also presents a sharp contrast to the manner in which the Securities and Exchange Commission (SEC) developed and promulgated Regulation Best Interest. The SEC acted pursuant to the clear and unambiguous approval of Congress, which came in the form of Section 913(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. That provision of federal law empowered the SEC to "commence a rulemaking, as necessary or appropriate to the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers ... [and] persons associated with brokers or dealers ... for providing personalized investment advice about securities to such retail customers." Whatever one's view of Regulation Best Interest, it was clearly and plainly authorized by Congress. There is, however, no analogous authorization in our code or elsewhere for the Department to promulgate this proposal.

Department Response
The Department believes it has legislative authority to promulgate the rules pursuant to T.C.A. §§ 56-2-301, 56-2-305, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110.

38. Moving forward with this proposal could also invite litigation from those who would view the amendment as a usurpation of legislative authority and a violation of the separation of powers doctrine. It is worth noting that courts across the country are increasingly scrutinizing rulemakings by insurance regulators. A Washington State court, for example, found last week that the commissioner there had exceeded his legislative authority when he promulgated a regulation banning the use of credit information in underwriting and rating.

And, the highest court in New York will hear oral arguments next month in a case challenging a very similar annuities rule on similar grounds. That case was brought by our sister agent association, and an intermediate appellate court unanimously ruled in favor of the agent plaintiffs last year.

The proposed revisions to the existing rule address insurance agent conduct in annuity transactions and would establish a wide range of new requirements for producers who recommend an annuity to a consumer.

The new obligations are comprehensive and robust, and they are set forth in detail in rule 0780-01-86-.06(1)(a)1. Among other features, the proposal would require an agent recommending an annuity transaction to do all of the following:
• Exercise reasonable diligence, care, and skill when advising a customer about a potential annuity purchase;
• Know a consumer's financial situation, insurance needs, and financial objectives;
• Collect an extensive universe of consumer profile information before making a recommendation;
• Believe the product recommended effectively addresses the consumer's situation, needs, and objectives over the life of the product and in light of that individual's consumer profile information;
• Understand the recommendation options available to the agent and consider the types of products that address the consumer's financial situation, insurance needs, and financial objectives;
• Consider and evaluate an additional series of factors when recommending a transaction involving the exchange or replacement of an annuity;
• Ensure that the consumer has received important information about the key features of the recommended annuity; • Provide comprehensive written disclosures outlining (1) the scope and terms of the relationship with the consumer, (2) the agent's role in the transaction, (3) the types of relevant products the agent is

authorized to sell, and (4) whether the agent has access to the products of one insurer or multiple companies;
• Disclose the sources and types of compensation an agent would receive as a result of the purchase of an annuity and provide an estimate of that compensation upon request;
• Satisfy new annuity-specific continuing education requirements; and
• Make a written record of any annuity recommendation (including the basis for the recommendation) and communicate the basis for the recommendation to the consumer.

Some insurance agents may not relish the heightened compliance obligations and burdens that will come with such new requirements, but we appreciate that most of these provisions are objective and straightforward and identify what must be done to comply. The adoption of these items alone – without the more controversial items we discuss below – would dramatically raise the level of regulatory scrutiny that applies to annuity sales and establish an array of consumer protections that do not exist today. Perhaps our most significant substantive concern with the proposed regulation is that, in addition to the broad array of provisions identified above, it would also impose a so-called "best interest" obligation on agents who recommend annuities.

Department Response
The Department recognizes the performance requirements for producers included in the rules and believes they are not overly burdensome. The additional requirements for producers are needed as part of a regulatory effort to ensure consumers are buying products appropriate for their needs or means.

39. Agents, not surprisingly, desire clear obligations and unambiguous rules of the road. The draft generally sets forth with clarity what would be required of agents, but the "best interest" references establish an obligation that is abstract, nebulous, and subjective. This text may seem innocuous, but creating such a duty opens the door to considerable uncertainty and other adverse consequences. The addition of this requirement would place agents in an untenable position because it does not specify what additional actions or compliance measures it would require or what behavior it would prohibit. Courts and other observers equate an obligation to act in one's best interest with a fiduciary duty (an outcome the proposed rule seeks to avoid), and the proposed regulation offers no insight into what these "best interest" references mean or how such a standard differs from a fiduciary one. Insurance is an intangible product, and the lack of clarity means agents who acted properly at the time of a recommendation will risk having their actions and judgment second-guessed by regulators in hindsight and be forced to defend their actions in costly proceedings.

We are not alone in suggesting that the adoption of a "best interest" standard of care for annuity transactions will produce ambiguity. Last year, a New York appellate court unanimously ruled in Independent Insurance Agents and Brokers of New York v. New York State Department of Financial Services that the state's annuities regulation and its standard of care were "unconstitutionally vague." The judges noted that the regulation (which is very similar to this proposal) utilizes "subjective terms," "fails to provide sufficient concrete, practical guidance for producers," and "provide[s] insufficient guidance with respect to how producers must conduct themselves in order to comply." They also highlighted the "ambiguities" and "lack of clear standards" in the New York regulation and concluded that the failure to clearly and objectively articulate the rules put agents in an untenable position and provided regulators with "virtually unfettered discretion." That outcome could have been avoided with a number of narrow revisions, and we should take notice here in Tennessee.

The references to a "best interest" standard in the Department's proposal are few and are not critical or necessary elements. They do not benefit consumers, and they can be deleted without any negative impact or repercussions. The other provisions already outline in detail the robust obligations that an agent would be required to satisfy, and the "best interest" text does not provide any additional impact or value. We urge the Department to allow the clear and objective requirements of the proposal to stand on their own and not require agents – on top of this comprehensive framework – to ambiguously act in a customer's best interest.

Some might argue that the "best interest" references are simply extraneous and present no cause for worry, but that is not a legitimate justification for retaining them. In addition, words have meaning, and courts are likely to give effect to all provisions and avoid outcomes where particular requirements are ignored or overlooked. This canon of statutory interpretation – the rule against surplusage – assumes that policymakers do not include unnecessary elements in the law and directs those interpreting the law to give effect to each provision.

Again, there are no adverse consequences for consumers or other stakeholders if the unnecessary text is removed. For this and the other reasons outlined above, we urge the removal of the ambiguous "best interest" references from the proposal and specifically propose revising 0780-01-86-.06(1) in the following manner:

~~Best Interest~~ Producer Obligations. A producer, when making a recommendation of an annuity, shall do so ~~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 has acted in the best interest of the consumer if they have satisfied~~ and by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation.

Department Response

To date, at least twenty-eight (28) other states have adopted the Model rule including the "best interest" standard. The "best interest" standard is articulated through the four (4) obligations of care, disclosure, conflict of interest, and documentation, and is sufficiently clear as written.

40. Preserving a Level Playing Field and the Primacy of State Insurance Regulation. While our most serious substantive concern with the proposal is its "best interest" references, we also encourage the Department to review and reconsider the safe harbor provision proposed as rule 0780-01-86-.06(5).

Some of our industry colleagues are suggesting the safe harbor would allow certain financial intermediaries (e.g. broker-dealers and registered representatives) to recommend and sell any annuity (even products that fall exclusively within the four corners of the insurance code) without satisfying the requirements of the proposed regulation. These industry players maintain, for example, that a registered representative recommending an annuity that is not a security could evade the duty to comply with this proposed rule and instead opt to comply with the lighter regulatory touch associated with federally-issued and securities-specific Regulation Best Interest. We do not see the public policy rationale for such an outcome, especially since Regulation Best Interest does not even apply to insurance or to annuities that are not securities, and a person not selling a security cannot conceivably comply with it. The establishment of such a sweeping (and unprecedented) set of exemptions would create an unfair playing field and undermine the principles of functional regulation and state regulatory authority over insurance.

Some in the insurer community have further suggested that the safe harbor/exemption provision would also have the effect of eliminating nearly all of the supervisory and oversight requirements that apply to carriers when an annuity is sold in certain instances. The insurer requirements contained in the heart of the draft are reasonable and appropriate, and we are uncertain what the public policy rationale would be for applying these rules when a traditional insurance agent sells an annuity but not in similar transactions involving other types of intermediaries. If the interpretation posited by some in the industry is accurate, then insurers would be able to avoid all of the following requirements whenever a financial intermediary takes advantage of the safe harbor:

• 0780-01-86-.06(3)(b)2., which requires insurers to "provide product-specific training and training materials which explain all material features of its annuity products to its producers;"
• 0780-01-86-.06(3)(b)4., which requires insurers "to establish and maintain procedures for the review of each recommendation prior to the 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;"
• 0780-01-86-.06(3)(b)5., which requires insurers to "establish and maintain procedures to detect recommendations that are not in compliance" with key elements of the proposed rule;
• 0780-01-86-.06(3)(b)7., which requires insurers to ""establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
• 0780-01-86-.06(3)(b)8., which restricts the manner in which insurers may compensate agents and prohibits certain types of sales bonuses and incentive compensation; and
• 0780-01-86-.06(4), which prohibits insurers from engaging in certain activities, such as dissuading a consumer from providing truthful consumer profile information or filing a complaint.

We can think of no reason why insurers should be required to comply with the requirements identified above in connection with some sales of annuities but not with others (especially since there is no comparable standard that would apply to companies). Such an outcome is arbitrary and merely creates both a regulatory vacuum and an unlevel playing field. It also incentivizes insurers to urge their agents to pursue the safe harbor route so that the companies have the ability to bypass the rule's requirements. Instead of permitting such a result, any revisions to the existing rule should ensure that the safe harbor provision cannot be exploited in this manner. It should instead make clear that insurers in all instances remain responsible for complying with the supervisory requirements of 0780-01-86-.06(3), the prohibitions of 0780-01-86-.06(4), the enforcement provisions of 0780-01-86-.08, the recordkeeping obligations of 0780-01-86-.09, etc.

Department Response
The U.S. Securities and Exchange Commissioner (SEC) is responsible for regulating the securities markets and protecting investors. The Financial Industry Regulatory Authority (FINRA) operates under the SEC and has promulgated specific regulations including those specific to financial intermediaries such as broker-dealers and registered representatives. The Department does not believe that the safe harbor provisions in these rules create an unlevel playing field because the rules of the SEC and FINRA similarly address recommendation suitability, compliance and supervisory systems, training requirements, and prohibitions of certain compensation agreements.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local government rules;

The Department has existing rules regarding the suitability of annuity transactions. The rules are being amended in order to reflect the amendments recently made to the National Association of Insurance Commissioners ("NAIC") Suitability in Annuity Transactions Model Regulation ("NAIC Annuities Model Rule"). As of April 2021, approximately twenty-eight (28) states have passed rules based on the NAIC Annuities Model Rule. The NAIC Annuities Model Rule is also consistent with the SEC's Regulation Best Interest which became effective in June 2020. NAIC sought to harmonize the NAIC Annuities Model Rule with the SEC's Regulation Best Interest.

(2) Clarity, conciseness, and lack of ambiguity in the rule;

These rules were drafted to be clear and concise.

(3) The establishment of flexible compliance and reporting requirements for small businesses;

The proposed rules may alter the standard practices of reporting and recordkeeping currently utilized by small businesses who make a recommendation or sale of an annuity. The requirements imposed by these rules fall upon all licensed insurance producers and insurers, who constitute both large and small businesses, that recommend or sell annuities. The amendments to the rule regarding additional actions related to the supervision ensuring compliance will affect insurers; however, insurers rarely fall within the category of a small business.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses;

The schedules and deadlines for compliance and reporting requirements imposed by these rules fall upon all licensed insurance producers, who constitute both large and small businesses, that recommend or sell annuities. The amendments to the rule regarding additional actions related to the supervision ensuring compliance will affect insurers; however, insurers rarely fall within the category of a small business.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses;

The proposed rules do not consolidate or simplify the compliance or reporting requirements for small businesses. The compliance and reporting requirements imposed by these rules fall upon all licensed insurance producers, who constitute both large and small businesses, that recommend or sell annuities.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and

These rules do not impose any performance, design, or operational standards on small businesses in Tennessee.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

The rules add a requirement for insurance producers to have more in depth knowledge at the time of a recommendation or sale of an annuity and add additional documents to be maintained under the existing recordkeeping requirements. Additional supervision requirements will also need to be established to ensure compliance with the new standard of conduct outlined above. These rules are based on the NAIC Annuities Model Rule. The NAIC sought public input from industry and consumer groups, and this model is the product of those discussions. The collaboration between industry and consumer groups helped to ensure that these rules ensure consumer protection while not representing an extreme hardship to insurance producers and insurers.

**Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The Department does not anticipate the rules to have a projected financial impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

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| The rule amends rule 0780-01-86 [Suitability in Annuity Transactions] by incorporating a best interest standard which is applicable when licensed insurance producers recommend or sell an annuity to a customer. These rules reflect the amendments recently made to the National Association of Insurance Commissioners ("NAIC") Suitability in Annuity Transactions Model Regulation ("NAIC Annuities Model Rule").<br><br>The addition of the best interest standard to the existing rules requires licensed insurance producers to satisfy obligations regarding care, disclosure, conflict of interest, and documentation at the time that a recommendation or sale of an annuity is made. The best interest standards also add additional requirements regarding steps that the insurer must take to ensure their compliance with the best interest standards. The rules also amend the safe harbor provision of the current rules and states that recommendations and sales of annuities made by financial professionals in compliance with business rules and controls that satisfy a "comparable standard" provide a safe harbor for financial professionals. |

A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

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| There are no federal regulations mandating promulgation of these rules. These rules adopt revisions to the NAIC Suitability in Annuity Transactions Model Regulation 275. |

Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

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| These rules impact insurance companies and insurance agents licensed to operate in the state of Tennessee. Some insurance industry organizations have supported the adoption of the rules in full while others have requested the Department to deviate from the Model language. |

Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

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| Indep. Ins. Agents & Brokers of New York, Inc. v. New York State Dep't of Fin. Servs., 195 A.D.3d 83, 88, 146 N.Y.S.3d 348, 351 (2021). |

An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

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| Minimal. The rule is not expected to raise any additional revenue. Also, the rule will not result in an additional cost. The Department will use existing resources. |

Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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| Bill Huddleston, Assistant Commissioner for Insurance<br>Trey Hancock, Director of Financial Affairs, Insurance Division |

Identification of the appropriate agency representative or representatives who will explain the rule at scheduled meeting of the committees;

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|---|
| Trey Hancock, Director of Financial Affairs, Insurance Division<br>Jenny Taylor, Associate General Counsel and Supervising Attorney for Insurance |

Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

| |
|---|
| 500 James Robertson Parkway<br>Nashville, TN 37243<br>Trey.Hancock@tn.gov (615) 741-1504<br>Jenny.Taylor@tn .gov (615) 426-1084 |

Any additional information relevant to the rule proposed for continuation that the committee requests;

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**COMMERCE AND INSURANCE**

**INSURANCE DIVISION**

**SUITABILITY IN ANNUITY TRANSACTIONS**



0780-01-86-.01 PURPOSE

(1) The purpose of this Chapter is to require producers, as defined in this Chapter, to act in the best interest of the consumer when making a recommendation of an annuity ~~insurers to establish a system to supervise recommendations and to set forth standards~~ and to require insurers to establish and maintain a system to supervise recommendations~~procedures for recommendations to consumers that result in transactions involving annuity products~~ so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively~~appropriately~~ addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this Chapter or to subject a producer to civil liability under the best interest standard of care outlined in ~~R~~rule 0780-01-86-.06 of this Chapter or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., ~~56-8-104(15), 56-8-107, and 56-8-110.~~

0780-01-86-.02 SCOPE

This Chapter shall apply to any sale or recommendation of ~~recommendation to purchase, exchange or replace~~ an annuity. ~~made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.~~

Authority: ~~:~~ T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., ~~56-8-104(15), 56-8-107, and 56-8-110.~~

0780-01-86-.03 AUTHORITY

This Chapter is issued under the authority of T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112(a), 56-6-112(d), 56-6-124(a), and 56-8-101 et seq.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., ~~56-8-104(15), 56-8-107, and 56-8-110.~~

0780-01-86-.04 EXEMPTIONS

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

(1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Chapter~~, or~~;

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(b) 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;

(c) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC; or

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(3) ~~(e)~~€Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(4) ~~(f)~~Formal prepaid funeral contracts.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., ~~56-8-104(15), 56-8-107, and 56-8-110.~~

0780-01-86-.05 DEFINITIONS

(~~1~~“) "Annu~~i~~”ty" 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.

(2) “Cash compensation” means any 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)~~(2~~“~~)~~ "Commissio~~n~~”er" means the Commissioner of the Tennessee Department of Commerce and Insurance.

(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) Financial situation and needs, including debts and other obligations;

(d) Financial experience;

(e) Insurance needs;

(f) Financial objectives;

(g) Intended use of the annuity;

(h) Financial time horizon;

(i) Existing assets or financial products, including investment, annuity, and insurance holdings;

(j) Liquidity needs;

(k) Liquid net worth;

(l) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;

(m) Financial resources used to fund the annuity; and

(n) Tax status.

(5)~~(3)~~ "Continuing Education Credit" or "CE Credit" means one continuing education credit as defined in rule ~~Tenn. Comp. Rules and Regs.~~ 0780-01-56.

(6)~~(4)~~ "Continuing Education Provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to rule ~~Tenn. Comp. Rules and Regs.~~ 0780-01-56.

(7)~~(5)~~ "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(8)~~(6)~~ "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

(9)~~(7)~~ "Producer" ~~"Insurance producer"~~ means a person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. For purposes of this Chapter, "producer" includes an insurer where no producer is involved.

(10) "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.

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

(12) "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.

(13) "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest-based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

(14)~~(8)~~ "Recommendation" means advice provided by a ~~an insurance~~ producer~~,~~ to an individual consumer that was intended to result or does result ~~or an insurer where no producer is involved, to an individual consumer that results~~ in a purchase, an exchange or a replacement of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(15)~~(9)~~ "Replacement" means a transaction in which a new annuity ~~policy or contract~~ is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a~~if there is no~~ producer is involved, that by reason of the transaction, an existing annuity or other insurance policy ~~policy or contract~~ has been or is to be any of the following:

(a) Lapsed, forfeited, surrendered, or partially surrendered;~~,~~ assigned to the replacing insurer; or otherwise terminated;

(b) 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;

(c) 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;

(d) Reissued with any reduction in cash value; or

(e) Used in a financed purchase.

~~(10)"Suitability Information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

(16) ~~(a)~~"SEC" means the United States Securities and Exchange Commission. ~~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.~~

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., ~~56-8-104(15), 56-8-107, and 56-8-110.~~

0780-01-86-.06 DUTIES OF INSURERS AND ~~INSURANCE~~ PRODUCERS

(1) Best Interest Obligations. A producer, when making a recommendation ~~In recommending to a consumer the purchase~~ 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 ~~or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance~~ producer's~~,~~ or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of ~~where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for~~ the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:~~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:~~

(a)

1. Care obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:

(i) Know the consumer's financial situation, insurance needs and financial objectives;

(ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

(iii) 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

(iv)~~(a)~~ Communicate the basis or bases of the recommendation.~~The consumer has been reasonably informed of various features of the annuity, such as~~

~~the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;~~

2. The requirements under Part 1. of this subparagraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

3. The requirements under Part 1. of this subparagraph 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. This does not require 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. Producers shall be held to standards applicable to producers with similar authority and licensure.

4. The requirements under this paragraph do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this rule~~.~~

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

6.~~(b)~~ The requirements under Part 1. of this subparagraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, ~~tax-deferred growth, annuitization or~~ death or living benefit, or other insurance-related features.~~;~~

7.~~(c)~~ The requirements under Part 1. of this subparagraph apply 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~~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~~

8. The requirements under Part 1. of this subparagraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

9. The requirements under Part 1. of this subparagraph do not mean the producer has ongoing monitoring obligations under the care obligation under this subparagraph, 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.

10.~~(d)~~ In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes ~~exchange or replacement is suitable including~~ taking into consideration whether:

(i)~~1.~~ The consumer will incur a surrender charge, be subject to the commencement of a new surrender period,~~,~~ lose existing benefits, ~~(~~such as death, living, or other contractual benefits~~)~~;~~,~~ or be subject to increased fees;~~,~~ investment advisory fees or charges for riders and similar product enhancements;

(ii)~~2.~~ The replacing product ~~consumer~~ would substantially benefit the consumer in comparison to the replaced ~~from~~ product over the life of the product~~enhancements and improvements~~; and

(iii)~~3.~~ The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty~~thirty-six~~ (60~~36~~) months.

11.~~(2)~~ Nothing in this Chapter should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including but not limited to, any securities license, in order to fulfill the duties and obligations contained in this rule; provided the ~~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 does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses~~is involved, shall make reasonable efforts to obtain the consumer's suitability information~~.

(b)~~(3)~~ Disclosure obligation.~~Except as permitted under paragraph (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.~~

1. Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:

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

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

(I) Fixed annuities;

(II)~~(4)~~ Fixed indexed annuities;

(III) Variable annuities;

(IV)~~(a)~~ Life ~~Except as provided under subparagraph (b) of this paragraph, neither an~~ insurance; ~~producer, nor an insurer, shall have any obligation to a consumer under paragraphs (1) or (3) related to any annuity transaction if:~~

(V) Mutual funds;

(VI) Stocks and bonds; and

(VII) Certificates of deposit;

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

(I) From one insurer;

(II)~~1.~~ From two or more insurers; or~~No recommendation is made;~~

(III) From two or more insurers although primarily contracted with one insurer.~~2.A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;~~

(iv) A description of the sources and types 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 premium or other remuneration received from the insurer, intermediary, or other producer or by fee as a result of a contract for advice or consulting services; and

(v)~~3.~~ A notice of the consumer's right to request additional ~~refuses to provide relevant suitability~~ information regarding cash compensation described in Part 2. of this subparagraph~~;~~. ~~and the annuity transaction is not recommended; or~~

2~~4~~. Upon request of the ~~A~~ consumer or the consumer's designated representative, the producer shall disclose:~~decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.~~

(i) 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

(ii) 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.~~; and~~

3.~~(b)~~ Prior to or at the time of the recommendation or sale of ~~An insurer's issuance 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 ~~subject to subparagraph (a) shall be reasonable under all the circumstances actually known to the insurer at the time~~ the annuity;~~,~~ limitations on interest returns;~~,~~ potential changes in non-guaranteed elements of the annuity, insurance, and investment components; and market risk. ~~is issued.~~

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

(d)~~(5)~~ Documentation obligation. A ~~An insurance producer or, where no insurance~~ producer ~~is involved, the responsible insurer representative,~~ shall at the time of recommendation or sale:

1.~~(a)~~ Make a written record of any recommendation and the basis for the recommendation ~~that is~~ subject to this Chapter~~rule 0780-01-86-.06(1)~~;

2. Obtain a consumer signed statement on a form substantially similar to Appendix B documenting:

(i)~~(b)~~ A ~~Obtain a~~ customer's ~~signed statement documenting a customer's~~ refusal to provide the consumer profile ~~suitability~~ information, if any; and

(ii) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

3.~~(c)~~ Obtain a consumer~~customer~~ signed statement on a form substantially similar to Appendix C acknowledging the ~~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 ~~insurance producer's or insurer's~~ recommendation.

(~~d~~e) Application of the best interest obligation. Any requirement applicable to a producer under this paragraph shall apply to every 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)~~(6)~~ Transactions not based on a recommendation.

(a) Except as provided under subparagraph (b) of this paragraph, a producer shall have no obligation to a consumer under paragraph (1)(a) of this rule related to any annuity transaction if:

1. No recommendation is made;

2. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

3. A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(b) An insurer's issuance of an annuity subject to subparagraph (a) of this paragraph shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(3) Supervision system.

(a) Except as permitted under paragraph (2) of this rule, 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 particular consumer’s financial situation, insurance needs, and financial objectives based on the consumer’s consumer profile information.

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

1. The insurer shall establish and maintain reasonable procedures to inform its ~~insurance~~ producers of the requirements of this Chapter and shall incorporate the requirements of this Chapter into relevant ~~insurance~~ producer training manuals;

2. The insurer shall establish and maintain standards for ~~insurance~~ producer product training and shall establish and maintain reasonable procedures to require its ~~insurance~~ producers to comply with the requirements of rule 0780-01-86-.07;

3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;

4~~3~~. The insurer shall establish ~~provide product-specific training~~ and ~~training materials which explain all material features of its annuity products to its insurance producers; 4 The insurer shall~~ maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure ~~that~~ 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~~a recommendation is suitable~~. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

5. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with paragraphs (1), (2), (4), and (5) of this rule~~suitable~~. This may include, but is not limited to, confirmation of the consumer’s consumer profile ~~suitability~~ information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring. Nothing in this part prevents an insurer from complying with this part by applying sampling procedures, or by confirming the consumer profile ~~suitability~~ information or other required information under this Chapter after issuance or delivery of the annuity; ~~and~~

6. 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 to the consumer the information required to be provided under this Chapter;

7. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

8. 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. The requirements of this part are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

9~~6~~. The insurer shall annually provide a written 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.

~~(c)~~©(~~b~~)

1. Nothing in this paragraph~~rule 0780-01-86-.06(6)~~ restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this paragraph~~subparagraph (a)~~. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 0780-01-86-.08 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's~~insur'er's~~ compliance with Part~~part~~ 2. of this subparagraph.

2. An insurer's~~insur'er's~~ supervision system under this paragraph~~subparagraph (a)~~ shall include supervision of contractual performance under this paragraph~~part~~. 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.

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

1.~~(c)~~ A producer's ~~An insurer is not required to include in its system of supervision an insurance produc'er's~~ recommendations to consumers of products other than the annuities offered by the insurer; or~~.~~

2. 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)~~(7)~~ Prohibited practices. Neither a ~~An insurance~~ producer nor an insurer shall ~~shall not~~ dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's~~insur'er's~~ request for confirmation of the consumer profile ~~suitability~~ information;

(b) Filing a complaint; ~~or~~

©(c) Cooperating with the investigation of a complaint.

(5)~~(8)~~ Safe harbor.

(a) Recommendations and sales of annuities ~~Sales~~ made in compliance with comparable standards ~~FINRA requirements pertaining to suitability and supervision of annuity transactions~~ shall satisfy the requirements under this rule~~Chapter~~. This paragraph applies to all recommendations and ~~FINRA broker-dealer~~ sales of annuities made by financial professionals in compliance with business rules, controls, ~~if the suitability~~ and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue~~supervision is similar to those applied to variable annuity sales~~. However, nothing in this paragraph shall limit the commissioner's ability to investigate and enforce~~enforce, including investigate,~~ the provisions of this rule~~Chapter~~.

(b) Nothing in subparagraph (a) of this paragraph shall limit the insurer's obligation to comply with subparagraph (3)(a) of this rule, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c)~~(b)~~For subparagraph (a) of this paragraph to apply, an~~the~~ insurer shall:

1. Monitor the relevant conduct of the financial professional seeking to rely on subparagraph (a) of this paragraph or the entity responsible for supervising the financial professional, such as the financial professional's ~~FINRA member~~ broker-dealer or an investment adviser registered under federal or Tennessee securities laws, using information collected in the normal course of an insurer's~~insurer's~~ business; and

2. Provide to the entity responsible for supervising the financial professional seeking to rely on subparagraph (a) of this paragraph, such as the financial professional's ~~FINRA member~~ broker-dealer or investment adviser registered under federal or Tennessee securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.~~the FINRA member broker-dealer to maintain its supervision system.~~

(d) For purposes of this paragraph, "financial professional" means a producer that is regulated and acting as:

1. A broker-dealer registered under federal or Tennessee securities laws or a registered representative of a broker-dealer;

2. An investment adviser registered under federal or Tennessee securities laws or an investment adviser representative associated with ~~the~~ a federal or Tennessee registered investment adviser; or

3. A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

(e) For purposes of this paragraph, "comparable standards" means:

1. With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA 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 rules thereto;

2. With respect to investment advisers registered under federal or Tennessee securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser

representatives by contract or under either the Investment Advisers Act of 1940 or Tennessee securities law, including but not limited to, the Form ADV and interpretations; and

3. With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., ~~56-8-104(15), 56-8-107, and 56-8-110.~~

0780-01-86-.07 ~~INSURANCE~~ PRODUCER TRAINING

(1) 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 ~~An insurance~~ producer may rely on insurer-provided product-specific training standards and materials to comply with this rule.

(2)

(a)

1. A ~~An 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 commerce and insurance and provided by the department of commerce and insurance-approved education provider.

2. ~~Insurance~~ Producers~~producers~~ who hold a life insurance line of authority prior to ~~on~~ the effective date of this Chapter and who desire to sell annuities shall complete the requirements of this paragraph within six (6) months after the effective date of this Chapter. Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter may not engage in the sale of annuities until the annuity training course required under this rule has been completed.

(b) The minimum length of the training required under this paragraph~~rule 0780-01-86-.07(2)~~ shall be sufficient to qualify for at least four (4) CE credits~~,~~ but may be longer.

(c) The training required under this paragraph~~rule 0780-01-86-.07(2)~~ shall include information on the following topics:

1. The types of annuities and various classifications of annuities;

2. Identification of the parties to an annuity;

3. How product specific annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;

5. The primary uses of annuities; and

6. Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

(d) Providers of courses intended to comply with this paragraph shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(e) A provider of an annuity training course intended to comply with this rule 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 rule chapter 0780-01-56.~~Tenn. Comp. Rules and Regs. 0780-01-56.~~

(f) A producer who has completed an annuity training course approved by the department of commerce and insurance prior to the effective date of these rules, shall, within six (6) months after the effective date of these rules, complete either:

1. A new four (4) credit training course approved by the department of commerce and insurance; or

2. An additional one-time one (1) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider on appropriate sales practices, replacement, and disclosure requirements under this amended Chapter.

(g)~~(f)~~ Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with rule chapter ~~Tenn. Comp. Rules and Regs.~~ 0780-01-56.

(h)~~(g)~~ Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with rule chapter ~~Tenn. Comp. Rules and Regs.~~ 0780-01-56.

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

(j)~~(h)~~ The satisfaction of the components of the training requirements of any course or courses with components ~~another state that are~~ substantially similar to the provisions of this paragraph~~rule 0780-01-86-.07(2)~~ shall be deemed to satisfy the training requirements of this paragraph~~rule~~ in this state.

(k)~~(i)~~ An insurer shall verify that a ~~an insurance~~ producer has completed the annuity training course required under this paragraph~~rule 0780-01-86-.07(2)~~ before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this paragraph~~rule 0780-01-86-.07(2)~~ 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.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-8-101 et seq. ~~56-8-104(15), 56-8-107, and 56-8-110~~ and Tenn. Comp. Rules and Regs. 0780-01-56-.08.

0780-01-86-.08 COMPLIANCE MITIGATION; PENALTIES

(1) An insurer is responsible for compliance with this Chapter. If a violation occurs, either because of the action or inaction of the insurer or its ~~insurance~~ producer, the commissioner may order, pursuant to statutory authority granting power for such order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this Chapter by the insurer, ~~insurer's, or~~ by its producer, or an entity contracted to perform the insurer's supervisory duties~~insurance producer's, violation of this Chapter~~;

(b) 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 Chapter; and

(c) Appropriate penalties and sanctions.

(2) Any applicable penalty under T.C.A. §§ 56-1-411, 56-2-305, 56-6-112, or 56-8-101, et seq. for a violation of this Chapter~~regulation~~ may be reduced or eliminated 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.

(3) The authority to enforce compliance with this Chapter is vested exclusively with the commissioner.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., ~~56-8-104(15), 56-8-107, 56-8-109, and 56-8-110.~~

0780-01-86-.09 RECORDKEEPING

(1) 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, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for five (5) 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 a ~~an insurance~~ producer.

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

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124(a), 56-8-101 et seq., ~~56-8-104(15), 56-8-107, and 56-8-110~~.

0780-01-86-.10 Effective date.

The amendments to this Chapter shall take effect January 1, 2024.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq.

APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES

Do Not Sign Unless You Have Read and Understand the Information in this Form.

Date: ___________________________

INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My”)

First Name: ______________________________ Last Name: ________________________________________

Business\Agency Name: _____________________________ Website: ________________________________

Business Mailing
Address: __________________________________________________________________________________

Business Telephone Number: ________________________________________________________________

Email Address: _____________________________________________________________________________

National Producer Number in [state]: ____________________________________________________________

CUSTOMER INFORMATION (“You”, “Your”)

First Name: __________________________________ Last Name: _____________________________________

What Types of Products Can I Sell You?

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

I offer the following products:

□ Fixed or Fixed Indexed Annuities

□ Variable Annuities

□ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

□ Mutual Funds

□ Stocks/Bonds

□ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

□ Annuities from Only One Insurer □ Annuities from Two or More Insurers

□ Annuities from Two or More Insurers although I primarily sell annuities from:

________________________

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

□ Commission, which is usually paid by the insurance company or other sources. If other sources, describe:

__________________________.

□ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

□ Other (Describe):__________________________________________________________________.

If You have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

_____________________________________________________

Customer Signature

_____________________________________________________

Date

_____________________________________________________

Agent (Producer) Signature

_____________________________________________________

Date

APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form.

Why are You being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent, broker, or company needs information about You, Your financial situation, insurance needs, and financial objectives.

If You sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives, and situation. You may lose protections under the Insurance Code of Tennessee if You sign this form or provide inaccurate information.

Statement of Purchaser:

□ I refuse to provide this information at this time.

□ I have chosen to provide limited information at this time.

________________________________________
Customer Signature

________________________________________
Date

APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

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

Why are You being given this form?

You are buying a financial product – an annuity.

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

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

Statement of Purchaser:

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

________________________________________
Customer Signature

________________________________________
Date

________________________________________
Agent/Producer Signature

________________________________________
Date