

**PROPOSED REGULATION OF  
THE COMMISSIONER OF INSURANCE**

**LCB File No. R165-18**

October 15, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-14, NRS 679B.130.

A REGULATION relating to insurance; prohibiting a producer of insurance from selling an annuity under certain circumstances; requiring an insurer to verify that a producer of insurance has completed certain training before allowing the producer of insurance to sell an annuity for the insurer; prohibiting a provider of a course in training in annuities from offering the course unless certain conditions are met; revising provisions governing recommendations relating to the sale of annuities; revising provisions governing requirements of systems of supervision of recommendations by insurers and producers of insurance; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides for the Commissioner of Insurance to regulate annuities. (NRS 679B.120, NRS chapter 688A) Existing regulations govern the selling of annuities. (NAC 688A.400-688A.475) **Section 6** of this regulation prohibits a producer of insurance from selling an annuity unless the producer has successfully completed a course of training in annuities that: (1) has been approved by the Commissioner; (2) consists of not less than 4 hours of instruction; and (3) includes information on certain required subjects. **Section 7** of this regulation prohibits a producer of insurance from selling an annuity unless the producer has: (1) adequate knowledge of the annuity to recommend the annuity; and (2) completed a course of training in annuities. **Section 7** also prohibits a producer of insurance from: (1) dissuading or attempting to dissuade a consumer from truthfully responding to an insurer's request for confirmation of the consumer's suitability information; and (2) filing, or cooperating with the investigation of, a complaint. **Section 8** of this regulation requires an insurer to verify that a producer of insurance has successfully completed a required course of training in annuities before allowing the producer of insurance to sell an annuity for the insurer. **Section 9** of this regulation prohibits a provider of a course of training in annuities from offering the course unless: (1) the provider has obtained approval for the course from the Commissioner; and (2) the provider and course are in compliance with certain requirements governing continuing education.

Existing regulations: (1) require an insurer or producer of insurance to make reasonable efforts to obtain certain information from a person before recommending the purchase or exchange of certain annuities; and (2) authorize the Commissioner to require an insurer or producer of insurance to take corrective action if an insured is harmed financially by the failure of the insurer or a producer of insurance to comply with certain requirements. (NAC 688A.455) **Section 12** of this regulation: (1) requires an insurer or producer of insurance to only make a recommendation that furthers the insurance needs and financial objectives, and is in the best interest, of the consumer; (2) revises the information which an insurer or producer of insurance must obtain in recommending an annuity to a consumer; (3) limits, with certain exceptions, the circumstances under which an insurer or producer of insurance may make the recommendation; (4) requires certain documentation of the recommendation and transaction; and (5) revises the persons whom the Commissioner may require to take corrective action and the circumstances under which such action may be required.

Existing regulations require insurers and producers of insurance to establish and maintain systems to supervise recommendations to ensure compliance with regulations. (NAC 688A.460) **Section 13** of this regulation: (1) establishes new requirements for training; (2) revises procedures for review of recommendations and monitoring of compliance, including oversight of required functions which are contracted out to third parties; and (3) requires annual reporting to senior management of insurers. **Section 13** also revises provisions governing compliance with rules of the securities and financial industries.

**Section 14** of this regulation: (1) provides that a producer of insurance who holds an existing line of authority which includes annuities on the effective date of this regulation must complete the required course of training in annuities not later than 6 months after the effective date of this regulation; and (2) relieves an insurer of the duty to verify that a producer of insurance who holds an existing line of authority on the effective date of this regulation has completed the required course of training in annuities for a period of 6 months after the effective date of this regulation.

**Section 1.** NAC 686A.526 is hereby amended to read as follows:

686A.526 “Replacement” means a transaction in which a new policy is to be purchased and the agent or insurer who proposes the replacement knows or should know, by reason of the transaction, that an existing policy has been or will be:

1. ~~Terminated;~~ *Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;*

2. Converted to reduced paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits or other values in the policy;
3. Amended to reduce benefits or to reduce the term for which coverage would otherwise remain in force;
4. Reissued with any reduction in the cash value of the policy; or
5. Pledged as collateral or subjected to borrowing for an aggregate amount that exceeds 25 percent of the loan value set forth in the policy.

**Sec. 2.** Chapter 688A of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 9, inclusive, of this regulation.

**Sec. 3.** *“Best interest” means that, at the time an annuity is issued, a producer of insurance who is making a recommendation concerning the annuity acts with reasonable diligence, care, skill and prudence in a manner the producer of insurance believes will put the interest of the consumer first. The term does not mean that a resulting recommendation is:*

1. *The least expensive annuity;*
2. *The annuity with the highest stated interest rate or income payout rate; or*
3. *The single best annuity,*

*↪ which is available in the marketplace at the time of the annuity transaction.*

**Sec. 4.** *“Replacement” has the meaning ascribed to it in NAC 686A.526.*

**Sec. 5.** *“Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation concerning an annuity, including, without limitation:*

1. *The age of the consumer;*

2. *The actual and desired annual income of the consumer;*
3. *The financial situation and needs of the consumer;*
4. *The financial experience of the consumer;*
5. *The financial objectives of the consumer;*
6. *The intended use of the annuity;*
7. *The financial time horizon of the consumer;*
8. *The existing assets and financial products of the consumer, including, without limitation, holdings of investments and life insurance;*
9. *The liquidity needs of the consumer;*
10. *The liquid net worth of the consumer;*
11. *The tolerance of risk by the consumer, including, without limitation, changes in nonguaranteed elements;*
12. *Financial resources used to fund an annuity, including, without limitation, potential surrender charges, tax implications and penalties that could be incurred by the use of those resources; and*
13. *The tax status of the consumer.*

**Sec. 6. 1.** *A producer of insurance may not sell an annuity unless the producer of insurance successfully completes a course of training in annuities as described in subsection 2 that has been approved by the Commissioner.*

*2. The training required by subsection 1:*

*(a) Must consist of not less than 4 hours of instruction and include, without limitation, information on the following subjects:*

- (1) The types of annuities and various classifications of annuities;*
- (2) The identification of the different parties to an annuity;*
- (3) How product-specific features of annuities affect consumers;*
- (4) The application of income taxation on qualified and nonqualified annuities;*
- (5) The primary uses of annuities;*
- (6) The financial exploitation of seniors and other vulnerable adults;*
- (7) Appropriate sales practices; and*
- (8) Requirements concerning disclosures and replacement of annuities.*

*(b) May not include:*

- (1) Any marketing information;*
- (2) Specific information about a particular insurer's annuities; or*
- (3) Training on sales techniques.*

*3. A course which satisfies the requirements for contents of continuing education established by the Financial Industry Regulatory Authority, or its successor entity, pursuant to Rule 1250 of that body will be deemed to satisfy the requirements of subsection 2.*

*4. A course of training in annuities which has been approved by the Commissioner and which complies with the requirements in subsection 1 of section 9 of this regulation may be conducted and completed through attendance and participation at a live presentation or through participation in a program of self-study.*

*5. A provider of a course of training in annuities shall comply with the requirements of subsections 1, 2 and 3 of NAC 683A.340.*

**Sec. 7. A producer of insurance shall not:**

*1. Solicit the sale or replacement of an annuity unless the producer of insurance:*

*(a) Has adequate knowledge of the annuity to recommend the annuity; and*

*(b) Is in compliance with:*

*(1) The requirements of section 6 of this regulation; and*

*(2) The insurer's standards for training regarding annuities of the insurer that offers*

*the annuity.*

*↪ A producer of insurance may rely on standards and materials from product-specific training which is provided by an insurer to comply with this subsection.*

*2. Dissuade, or attempt to dissuade, a consumer from:*

*(a) Truthfully responding to an insurer's request for confirmation of the consumer's suitability information;*

*(b) Filing a complaint with the Division; or*

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

*Sec. 8. 1. An insurer shall, before allowing a producer of insurance to sell an annuity for the insurer, verify that the producer of insurance has successfully completed a course of training in annuities in accordance with section 6 of this regulation that is approved by the Commissioner.*

*2. An insurer may satisfy the requirements of subsection 1 by obtaining:*

*(a) A copy of a producer of insurance's certificate of completion for the course of training in annuities;*

*(b) A report provided by:*

*(1) A database system or database vendor sponsored by the Commissioner; or*

*(2) A reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers; or*

*(c) Proof of the producer of insurance's successful completion of training in another state that is substantially similar to the requirements described in section 6 of this regulation.*

**Sec. 9.** *A provider of a course of training in annuities shall not offer the course unless:*

*1. The provider has obtained approval for the course from the Commissioner in accordance with the procedure for obtaining the approval for a course of continuing education as set forth in NAC 683A.335; and*

*2. The provider and course are in compliance with all provisions applicable to continuing education as set forth in NAC 683A.335, 683A.337 and 683A.340;*

*↪ as if the course of training in annuities were a course for continuing education.*

**Sec. 10.** NAC 688A.400 is hereby amended to read as follows:

688A.400 As used in NAC 688A.400 to 688A.475, inclusive, *and sections 3 to 9, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 688A.405 to 688A.445, inclusive, *and sections 3 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

**Sec. 11.** NAC 688A.450 is hereby amended to read as follows:

688A.450 1. Except as otherwise provided in subsections 2 and 3, NAC 688A.400 to 688A.475, inclusive, *and sections 3 to 9, inclusive, of this regulation* apply to:

- (a) Any solicitation, negotiation or procurement of annuities occurring within this State;
- (b) Any issuer of annuities, including, without limitation, fraternal benefit societies; and
- (c) Individual deferred annuities.

2. NAC 688A.400 to 688A.475, inclusive, *and sections 3 to 9, inclusive, of this regulation*

do not apply to:

(a) Annuities used to pay for:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

(2) A plan established or maintained by an employer and authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 408(k) or 408(p).

(3) A governmental plan, as defined in 26 U.S.C. § 414(d).

(4) A church plan, as defined in 26 U.S.C. § 414(e).

(5) A government or church welfare benefit plan.

(6) A deferred compensation plan of a state or local government or a tax exempt organization authorized by 26 U.S.C. § 457.

(7) A nonqualified deferred compensation arrangement.

(8) A settlement or an assumption of liabilities associated with litigation or any other process for dispute resolution related to a claim for compensation for personal injury.

(9) A prepaid funeral contract.

(10) A structured settlement annuity.

(11) A funding agreement.

(b) Immediate annuity contracts that do not contain any nonguaranteed elements.

(c) Annuities purchased from an insurer in response to a direct-response solicitation and where the purchase was not based on a recommendation from the insurer.



3. Notwithstanding the provisions of subsection 2, NAC 688A.400 to 688A.475, inclusive, *and sections 3 to 9, inclusive, of this regulation* apply to any annuity that is used to pay for a plan or arrangement which is paid for solely by contributions made by an employee on a pretax or after-tax basis and where participants are able to choose from among two or more fixed annuity providers.

4. As used in this section:

(a) “Funding agreement” means an agreement under which an insurer accepts and accumulates money for the purpose of making one or more future payments to a person that are not based on mortality or morbidity contingencies.

(b) “Structured settlement annuity” means:

(1) A qualified funding asset that meets the requirements of section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d); or

(2) An annuity that meets the requirements to be a qualified funding asset pursuant to section 130(d) of the Internal Revenue Code, 26 U.S.C. § 130(d), except that the annuity is not owned by an assignee under qualified assignment.

**Sec. 12.** NAC 688A.455 is hereby amended to read as follows:

688A.455 1. Except as otherwise provided in subsection ~~[2, before an insurer or a producer of insurance recommends]~~ *3, in recommending* to a ~~[person]~~ *consumer* the purchase of an annuity, or the exchange of an annuity that results in ~~[the purchase or exchange of an annuity in accordance with the recommendation, the insurer or]~~ *another insurance transaction or series of insurance transactions, a* producer of insurance ~~[must make reasonable efforts to obtain:~~  
~~—(a) The financial and tax status of the person;~~

~~—(b) The investment objectives of the person; and~~

~~—(c) Any other information that the insurer or producer of insurance determines would be useful in making such a recommendation.~~

~~—2.] or, in circumstances under which no producer of insurance is involved, an insurer shall only make a recommendation that furthers the insurance needs and financial objectives, and is in the best interest, of the consumer at the time the recommendation is made based on the facts which the consumer discloses as to his or her investments, other insurance products and financial situation and needs, including, without limitation, his or her suitability information.~~

*2. Before recommending an annuity, a producer of insurance or, in circumstances under which no producer of insurance is involved, an insurer shall:*

*(a) Make reasonable efforts to obtain the suitability information of the consumer;*

*(b) Evaluate the types of financial products which:*

*(1) Correspond to the suitability information disclosed by the consumer; and*

*(2) Address the financial objectives of the consumer; and*

*(c) Provide disclosure of the following information to the consumer:*

*(1) The scope of services which may be provided by the producer of insurance or insurer, as applicable;*

*(2) The scope of the licenses of the producer of insurance, if applicable;*

*(3) Material conflicts of interest arising from financial incentives that are associated with the recommendation, including, without limitation, any direct interest or ownership which the producer of insurance or an immediate family member of the producer of insurance has in the insurer whose product is being recommended; and*

*(4) The sources and types of compensation which the producer of insurance will or may receive as a result of the recommended transaction.*

3. Before an insurer or a producer of insurance recommends to a person the purchase of a variable annuity, or the exchange of a variable annuity that results in any additional insurance transaction, the insurer or producer of insurance must make reasonable efforts to : ~~{obtain:}~~

(a) ~~{The information described in subsection 1;}~~ *Comply with the provisions of subsections 1 and 2;* or

(b) ~~{The}~~ *Obtain the* information described in ~~{Conduct Rule 2310 of the National Association of Securities Dealers.~~

~~—3.}~~ *the requirements pertaining to suitability as established by the Financial Industry Regulatory Authority or its successor entity, including, without limitation, Rule 2111 of that body.*

4. *In recommending to a consumer the purchase of an annuity, or the exchange of an annuity that results in another insurance transaction or series of transactions, a producer of insurance or, in circumstances under which no producer of insurance is involved, an insurer must have a reasonable basis to believe:*

(a) *The consumer has been reasonably informed of various features of the annuity, including, without limitation:*

*(1) Any potential surrender period and surrender charge;*

*(2) Any potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity;*

*(3) Mortality risk;*

- (4) Expense fees;*
- (5) Investment advisory fees;*
- (6) Features of, and any potential charges for, riders;*
- (7) Limitations on interest returns;*
- (8) Insurance and investment components; and*
- (9) Market risk.*

*(b) The consumer would benefit from certain features of the annuity, including, without limitation:*

- (1) Tax-deferred growth;*
- (2) Annuitization; and*
- (3) Death benefits and living benefits.*

*(c) The annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity and riders and similar product enhancements, if any, further the insurance needs and financial objectives, and are in the best interest, of that consumer based on his or her suitability information;*

*(d) In the case of an exchange or replacement of an annuity, the exchange or replacement and the transaction as a whole further the insurance needs and financial objectives, and are in the best interest, of that consumer based on his or her suitability information, taking into consideration whether the consumer:*

- (1) Will:*
  - (I) Incur a surrender charge;*
  - (II) Be subject to the commencement of a new surrender period;*

*(III) Lose existing benefits, including, without limitation, death benefits, living benefits or other contractual benefits; or*

*(IV) Be subject to increased fees, advisory fees or charges for riders and similar product enhancements;*

*(2) Would benefit from product enhancements and improvements, and the replacing product would provide a substantial financial benefit to the consumer over the life of the product; and*

*(3) Has transacted another exchange or replacement, particularly within the preceding 60 months.*

*5. At the time of sale of an annuity, the producer of insurance or responsible representative of the insurer, as applicable, shall:*

*(a) Make a record of any recommendation and the basis or bases of the recommendation;*

*(b) If the consumer decides to enter into a transaction for an annuity that is not based on a recommendation by the producer of insurance or insurer, obtain a statement, signed by the consumer, in which the consumer acknowledges that the transaction for the annuity is not recommended by the producer of insurance or insurer; and*

*(c) If the consumer refuses to provide suitability information, obtain a statement, signed by the consumer, which documents that refusal.*

*6. Except as otherwise provided in subsection 7, an insurer shall not issue an annuity which is recommended to a consumer unless the insurer has a reasonable basis to believe, based on the suitability information of the consumer, that the annuity furthers the insurance needs and financial objectives, and is in the best interest, of the consumer.*

7. *An insurer is not obligated to determine whether an annuity furthers the insurance needs and financial objectives, and is in the best interest, of a consumer if:*

(a) *A producer of insurance makes no recommendation regarding a transaction for an annuity to the consumer;*

(b) *A producer of insurance makes a recommendation but the recommendation is later found to have been made based on materially inaccurate information which was provided by the consumer;*

(c) *The consumer refuses to provide relevant suitability information and a producer of insurance does not recommend a transaction for an annuity; or*

(d) *The consumer decides to enter into a transaction for an annuity that is not based on a recommendation of the insurer or a producer of insurance.*

↪ *The insurer must instead determine whether the annuity is reasonable based on the circumstances actually known to the insurer at the time the annuity is to be issued.*

8. *The requirements of this section are in addition to any applicable duties and requirements with which a producer of insurance must comply pursuant to NRS 90.575.*

9. *An insurer is responsible for compliance with this section.* Except as otherwise provided in subsection ~~[4,]~~ 10, if ~~[an insured is harmed financially]~~ *a violation of this section occurs because of any action or inaction of an insurer or a producer of insurance, ~~[failed to comply with subsection 1 or 2,]~~ the Commissioner may ~~[require]~~ :*

(a) *Require* the insurer ~~[or producer of insurance]~~ to take *reasonably appropriate* corrective action ~~[~~

~~—4.]~~ *for any consumer who is harmed by the violation by the insurer or producer of insurance for that insurer;*

*(b) Require the producer of insurance or an agency which is licensed to sell insurance in this State to take reasonably appropriate corrective action for any consumer who is harmed by the violation by the producer of insurance; and*

*(c) Impose penalties and sanctions.*

**10.** An insurer or a producer of insurance is not responsible for any financial damages incurred by an insured relating to the purchase or exchange of an annuity that was recommended by the insurer or producer of insurance if the insured:

(a) Refused to provide to the insurer or producer of insurance the information described in subsection ~~[1 or 2;]~~ **2 or 3;**

(b) Provided to the insurer or producer of insurance information that was incomplete or inaccurate; or

(c) Entered into an insurance transaction that was not based on the recommendation of the insurer or producer of insurance.

**11.** *The provisions of this section do not replace the requirements of NAC 686A.573 and 686A.577.*

**Sec. 13.** NAC 688A.460 is hereby amended to read as follows:

688A.460 1. An insurer shall ~~[provide for]~~ **establish** a system ~~[to supervise recommendations]~~ **of supervision** which is reasonably designed to ~~[comply]~~ **achieve the compliance of the insurer and its producers of insurance** with the provisions of this chapter . ~~[and which is established and maintained pursuant to subsections 3, 4 and 5.]~~ The system must

~~[include,]~~ *require the insurer to*, without limitation ~~[, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this chapter.]~~ :

*(a) Provide product-specific training and training materials which explain all material features of its annuities to its producers of insurance.*

*(b) Incorporate the requirements of NAC 688A.400 to 688A.475, inclusive, and sections 3 to 9, inclusive, of this regulation into relevant materials for the training of producers of insurance.*

*(c) Establish standards for training producers of insurance on the insurer's products.*

*(d) Establish and maintain reasonable procedures to:*

*(1) Inform its producers of insurance of the requirements of NAC 688A.400 to 688A.475, inclusive, and sections 3 to 9, inclusive, of this regulation.*

*(2) Require its producers of insurance to comply with the requirements of NAC 688A.455.*

*(3) Review each recommendation relating to an annuity before issuing the annuity. The procedures:*

*(I) Must be designed to ensure that there is a reasonable basis to determine that the recommendations furthers the insurance needs and financial objectives, and is in the best interest, of a consumer.*

*(II) May provide for reviews to be accomplished electronically or through other means, including, without limitation, physical review.*



*(III) May apply a system of screening to identify selected transactions for additional review and may be designed to require additional review of only those transactions which are identified by certain selection criteria.*

*(4) Detect recommendations that do not further the insurance needs and financial objectives, and are not in the best interest, of consumers. The procedures may include, without limitation:*

*(I) Confirmation of the suitability information of a consumer;*

*(II) Systematic surveys of consumers;*

*(III) Interviews of consumers;*

*(IV) Confirmation letters to consumers; and*

*(V) Programs of internal monitoring.*

*↳ Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after the issuance or delivery of an annuity.*

*(5) Supervise the performance of functions for which the insurer has contracted with a third party pursuant to subsection 3. The procedures must include, without limitation:*

*(I) Monitoring and, as appropriate, conducting audits of the third party to ensure that the functions are properly performed; and*

*(II) Annually obtaining a certification from a senior manager of the third party who has the responsibility for the functions that the manager has a reasonable basis to represent, and does so represent, that the third party is properly performing the functions.*

*(6) Provide to its senior management, including, without limitation, the senior manager who is responsible for audit functions, an annual report which details:*

*(I) A review of the system of supervision, with appropriate testing which is reasonably designed to determine the effectiveness of that system;*

*(II) Any exceptions found; and*

*(III) Corrective action which taken or recommended, if any.*

2. A producer of insurance shall ~~provide for~~ *establish* a system ~~to supervise~~ *recommendations* of supervision which is reasonably designed to ~~comply~~ *achieve the compliance of the producer of insurance and his or her insurer* with the provisions of this chapter . ~~and which is established and maintained pursuant to subsections 3, 4 and 5.~~ The system must ~~include,~~ *require the producer of insurance to*, without limitation ~~, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this chapter.~~, *establish and maintain reasonable procedures to:*

*(a) Review each recommendation relating to an annuity before issuing the annuity. The procedures:*

*(1) Must be designed to ensure that there is a reasonable basis to determine that the recommendations furthers the insurance needs and financial objectives, and is in the best interest, of a consumer.*

*(2) May provide for reviews to be accomplished electronically or through other means, including, without limitation, physical review.*

*(3) May apply a system of screening to identify selected transactions for additional review and may be designed to require additional review of only those transactions which are identified by certain selection criteria.*

*(b) Detect recommendations that do not further the insurance needs and financial objectives, and are not in the best interest, of consumers. The procedures may include, without limitation:*

*(1) Confirmation of the suitability information of a consumer;*

*(2) Systematic surveys of consumers;*

*(3) Interviews of consumers;*

*(4) Confirmation letters to consumers; and*

*(5) Programs of internal monitoring.*

*↪ Nothing in this paragraph prevents a producer of insurance from complying with this paragraph by applying sampling procedures or by confirming suitability information after the issuance or delivery of an annuity.*

3. An insurer may contract with a third party ~~[, including, without limitation, a producer of insurance, to establish and maintain a system to supervise recommendations pursuant to the provisions of]~~ *for the performance of a function required by* subsection 1 ~~[with respect to producers of insurance under contract with or employed by the third party.]~~, *including, without limitation, the establishment and maintenance of procedures required by that subsection. The insurer is responsible for taking appropriate corrective actions and may be subject to sanctions and penalties regardless of whether the insurer:*

*(a) Contracts with a third party; or*

*(b) Complies with the requirements of subparagraph (5) of paragraph (d) of subsection 1.*

~~4. [An insurer shall make a reasonable inquiry to ensure that a third party with whom the insurer contracts pursuant to subsection 3 complies with the provisions of subsection 1 and shall take reasonable action to enforce the contractual obligation to comply with the provisions of subsection 1. An insurer may comply with its obligation to make a reasonable inquiry by:~~

~~—(a) Obtaining a certification that the third party is complying with the provisions of subsection 1 from a senior manager of the third party who has responsibility for complying with the provisions of subsection 1; and~~

~~—(b) Periodically reviewing the performance of the third party to determine whether the third party is complying with the provisions of subsection 1. The insurer shall use reasonable procedures in conducting the review.~~

~~5.]~~ The provisions of subsections 1 and 2 do not require an insurer or a producer of insurance to:

(a) Review, or provide for the review of, all solicited transactions of a producer of insurance;

or

(b) Include in its system to supervise recommendations advice given to consumers by a producer of insurance concerning products other than the annuities offered by the insurer or producer of insurance.

~~[6.]~~ **5.** A producer of insurance contracting with an insurer pursuant to subsection 3, when requested by an insurer pursuant to *subparagraph (5) of paragraph (d) of subsection [4.] 1*, shall provide to the insurer a certification as described in ~~[subsection 4]~~ *that subparagraph* or a clear

statement that the producer of insurance is unable to meet the criteria for certification within 10 days after the producer of insurance receives the request from the insurer.

~~[7.]~~ 6. A person may not provide a certification pursuant to *subparagraph (5) of paragraph [(a)] (d)* of subsection ~~[4]~~ 1 unless:

(a) The person is a senior manager with responsibility for complying with the provisions of subsection 1; and

(b) The person has a reasonable basis for making the certification.

~~[8.—Compliance]~~

7. *A sale of an annuity that is made in compliance* with ~~[Conduct Rule 2310 of the National Association of Securities Dealers]~~ *Rule 2111*, pertaining to suitability, *and Rule 3110, pertaining to supervision, of the Financial Industry Regulatory Authority* satisfies the requirements of this section. ~~[for the recommendation of variable annuities.~~

~~—9.]~~ *This subsection also applies to the sale of an annuity by a broker-dealer who is registered with the Financial Industry Regulatory Authority if:*

(a) *The standards for suitability and supervision which are applicable to that sale are similar to the standards which are applicable to the sale of a variable annuity by the broker-dealer; and*

(b) *The insurer:*

(1) *Monitors the broker-dealer using information which is collected in the normal course of an insurer's business; and*

*(2) Provides the broker-dealer with information and reports that are reasonably appropriate to assist the broker-dealer in maintaining the broker-dealer's system of supervision.*

*↪ Nothing in this subsection shall be construed to limit the ability of the Commissioner to enforce the provisions of this chapter.*

8. An insurer that contracts with a third party *for the performance of a function* pursuant to subsection 3 and that complies with the requirements set forth in *subparagraph (5) of paragraph (d) of subsection [4] I* shall be deemed to have complied with the provisions of subsection 1 ~~[4]~~ *as they relate to that function.*

**Sec. 14.** 1. A producer of insurance who holds a line of authority which includes annuities on the effective date of this regulation must successfully complete a course of training in annuities pursuant to section 6 of this regulation not later than 6 months after the effective date of this regulation.

2. Notwithstanding the provisions of section 8 of this regulation, an insurer is not required to verify that a producer of insurance has successfully completed a course of training in annuities pursuant to section 6 of this regulation if:

(a) The producer of insurance holds a line of authority which includes annuities on the effective date of this regulation; and

(b) A period of 6 months has not elapsed since the effective date of this regulation.