

211 CMR 96.00: CONSUMER PROTECTION AND SUITABILITY IN ANNUITY TRANSACTIONS

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96.01: Purpose

(1) 211 CMR 96.00 sets forth standards and procedures for insurance producers, or insurers where no producer is involved, who make recommendations to consumers that result in a transaction involving annuity products to improve consumers' understanding of the annuity products for which recommendations have been made and so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of 211 CMR 96.00.

96.02: Scope

211 CMR 96.00 shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

96.03: Exemptions

Unless otherwise specifically included, 211 CMR 96.00 shall not apply to recommendations or transactions involving:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to 211 CMR 96.00.
- (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 THE Internal Revenue Code (IRC), as amended, §§ 401(a), 401(k), 403(b), 408(k) or 408(p),, if established or maintained by an employer;
 - (c) A government or church plan defined in IRC § 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under IRC § 457;

- (d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- (e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- (f) Formal prepaid funeral contracts.

96.04: Definitions

Annuity means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

Commissioner means the Commissioner of Insurance appointed pursuant to M.G.L. c.26, §6.

Continuing education credit or CE credit means a continuing education credit as required by M.G.L. c 175, §177E and 211 CMR 50.00: *Continuing Education for Insurance Producers*.

Continuing education provider or CE provider means an individual or entity that is approved to offer continuing education courses pursuant to M.G.L. c 175, §177E and 211 CMR 50.00: *Continuing Education for Insurance Producers*.

FINRA means the Financial Industry Regulatory Authority or a succeeding agency.

Insurance Producer means a person required to be licensed under the laws of Massachusetts to sell, solicit or negotiate insurance, including annuities.

Insurer means a company required to be licensed under the laws of Massachusetts to provide insurance products, including annuities.

Person means any individual, corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

Recommendation means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.

Replacement means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (a) Lapsed, forfeited, surrendered, 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.

Suitability information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

- (a) Age;
- (b) Annual income;
- (c) Financial situation and needs, including the financial resources used for the funding of the annuity;
- (d) Financial experience;
- (e) Financial objectives;
- (f) Intended use of the annuity;
- (g) Financial time horizon;
- (h) Existing assets, including investment and life insurance holdings;
- (i) Liquidity needs;
- (j) Liquid net worth;
- (k) Risk tolerance;
- (l) Tax status; and
- (m) Existing policies or contracts previously sold by the same producer to the same consumer.

96.05: Duties of Insurance Producers and Insurers

- (1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products, his or her financial situation and needs and his or her suitability information.
- (2) The Producer shall have informed the consumer of various features of the annuity, including but not limited to 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, and has a reasonable basis to believe that:
 - (a) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
 - (b) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and
 - (c) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
 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;
 2. The consumer would benefit from product enhancements and improvements; and
 3. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.
- (3) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make

reasonable efforts to confirm the consumers suitability information.

(4) Except as permitted under 211 CMR 96.06(5) 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.

(5) (a) Except as provided under 211 CMR 96.06(5)(b), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under 211 CMR 96.05(1) or (4) related to any recommendation if a consumer:

1. Refuses to provide relevant information requested by the insurance producer or insurer;
2. Decides to enter into an insurance transaction that is not based on a recommendation of the insurance producer or insurer; or
3. Fails to provide complete or accurate information.

(b) An insurer's issuance of an annuity subject to 211 CMR 96.05(5)(a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(6) (a) An insurer shall establish a supervision system that is designed to achieve compliance with 211 CMR 96.00, including, but not limited to, the following:

1. The insurer shall maintain procedures to inform its insurance producers of the requirements of 211 CMR 96.00 and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;
2. The insurer shall establish standards for insurance producer product training and shall maintain procedures to require its insurance producers to comply with the requirements of 211 CMR 96.06;
3. The insurer shall 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 review of each recommendation prior to issuance of an annuity. The review procedures shall be designed to ensure that the 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 review procedures may be designed to require additional review only of those transactions identified for additional review;
5. The insurer shall maintain procedures to detect unsuitable recommendations. In addition to investigating consumer complaints, these may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Insurers may comply with this requirement by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity;
6. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b) 1. Insurers may contract for compliance with 211 CMR 96.05(6)(a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to 211 CMR 96.07 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance

with 211 CMR 96.05(6)(b)(2)

2. An insurer's supervision system under 211 CMR 96.05(6)(a) shall include supervision of contractual performance. This includes, but is not limited to, the following:

a. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

b. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the function is properly performed.

3. An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

(7) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(a) Make a record of any recommendation subject to 211 CMR 96.05(1);

(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(8) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

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

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(9) (a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements of 211 CMR 96.00. 211 CMR 96.05(9) applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commissioner's ability to investigate and enforce the provisions of this regulation.

(b) For 211 CMR 96.05(9)(a) to apply, an insurer shall:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

96.06 Insurance Producer Training

- (1) 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. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with 211 CMR 96.06.
- (2)(a) An insurance producer who engages in the sale of annuity products shall complete a one-time training course for four (4) CE credits, approved by the Commissioner and provided by a continuing education provider.
(b) Insurance producers who hold a life insurance line of authority on July 1, 2016 and who desire to sell annuities shall complete the requirements of 211 CMR 96.06(2) on or before December 31, 2016. Individuals who obtain a life insurance line of authority on or after July 1, 2016 may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
- (3) The minimum length of the training required under 211 CMR 96.06(2) shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
- (4) The training required under 211 CMR 96.06(2) shall include information on the following topics:
 - (a) The types of annuities and various classifications of annuities;
 - (b) Identification of the parties to an annuity;
 - (c) How fixed, variable and indexed annuity contract provisions affect consumers;
 - (d) The application of income taxation of qualified and non-qualified annuities;
 - (e) The primary uses of annuities; and
 - (f) Appropriate sales practices, replacement and disclosure requirements.
- (5) Training courses intended to comply with this subsection shall cover all topics listed in 211 CMR 96.06(4) 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 topics.
- (6) A provider of an annuity training course intended to comply with 211 CMR 96.06 shall register as a CE provider in this Commonwealth and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in M.G.L. c. 175, §177E, and 211 CMR 50.00: *Continuing Education for Insurance Producers*.
- (7) The satisfaction of training requirements of another State that are substantially similar to the provisions of 211 CMR 96.06 shall be deemed to satisfy the training requirements of 211 CMR 96.06.
- (8) An insurer shall verify that an insurance producer has completed the annuity training course required under 211 CMR 96.06 before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under 211 CMR 96.06(8) by obtaining certificates of completion of the training course or CE transcripts from the insurance Producer.

96.07.: Penalties

- (1) In addition to any other penalties provided by the laws of Massachusetts, an insurance producer or insurer that violates a requirement of 211 CMR 96.00 shall be deemed to be in violation of the provisions of M.G.L. c. 176D.
- (2) If a violation occurs, the Commissioner may order:
 - (a) An insurer to take appropriate corrective action for any consumer harmed by the insurer's, or by its producer's, violation of 211 CMR 96.00;
 - (b) An insurance producer to take appropriate corrective action for any consumer harmed by the insurance producer's violation of 211 CMR 96.00; and
 - (c) Any person that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the insurance producer's violation of 211 CMR 96.00.
- (3) When determining the appropriate penalty under M.G.L. c. 176D for violations of 211 CMR 96.05(1), (2) or (3), the Commissioner may take into consideration whether corrective action was taken for the consumer promptly after such violation was discovered or the violation was not part of a pattern or practice.

96.08: Recordkeeping

- (1) Insurance producers and insurers shall maintain or be able to make available to the Commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
- (2) Records required to be maintained by 211 CMR 96.00 may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

96.09: Severability

If any provision of 211 CMR 96.00 is held to be invalid, in any way, by any court of law, the remainder of 211 CMR 96.00 shall not be affected.

96.10: Effective Date

211 CMR 96.00 shall apply to recommendations made on or after October 1, 2016 to a consumer to purchase, replace or exchange an annuity by an insurance producer, or an insurer where no producer is involved, that result in the purchase, replacement or exchange recommended.

REGULATORY AUTHORITY

211 CMR 96.00: M.G.L. c. 176D.