



LOUISIANA DEPARTMENT OF INSURANCE

TIMOTHY J. TEMPLE

COMMISSIONER

August 12, 2024

The Honorable Cameron Henry
President, Louisiana State Senate
P.O. Box 94183
Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
apa.senatepresident@legis.la.gov

The Honorable Phillip R. DeVillier
Speaker, Louisiana House of Representatives
P.O. Box 94062
Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
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The Honorable Kirk Talbot
Chairman of the Senate Insurance Committee
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ELECTRONIC TRANSMISSION
apa.s-ins@legis.la.gov

The Honorable Michael "Gabe" Firment
Chairman of the House Insurance Committee
P.O. Box 94062
Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
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RE: Summary Report – Regulation 89–Suitability in Annuity Transactions

Dear President Henry, Speaker DeVillier, Senator Talbot, and Representative Firment:

The Louisiana Department of Insurance (LDI) hereby submits the following summary report required by [La. R.S. 49:966\(D\)\(1\)\(b\)](#) and announces its intention to finalize Regulation 89, which was published as a Notice of Intent in the May 2024 edition of the *Louisiana Register*.

Interested persons were invited to submit comments to the LDI concerning the proposed regulation on or before June 10, 2024. The LDI received several comments from interested parties in response to the Notice of Intent and responded accordingly. No changes have been made to the proposed regulation.

Copies of all comments and LDI's related responses are enclosed and summarized below for your consideration.

COMMENT 1: Angelika Graves of Starr Indemnity & Liability Company emailed a request for instructions to update contact information.

RESPONSE: This comment is not relevant to the proposed amendments to Regulation 89; however, Graves' request was routed to the proper division within the LDI for handling.

COMMENT 2: Danielle Van Pelt of TruStage emailed a request to be removed from the LDI Industry Portal Notification System.

RESPONSE: This comment is not relevant to the proposed amendments to Regulation 89; however, Van Pelt's request was routed to the proper division within the LDI for handling.

COMMENT 3: Kurt Spath emailed a request to be removed from the LDI Industry Portal Notification System.

RESPONSE: This comment is not relevant to the proposed amendments to Regulation 89; however, Spath's request was routed to the proper division within the LDI for handling.

COMMENT 4: James B. Watson of Bank of America emailed a request that the LDI identify the date that the "Best Interest" standard would be implemented.

RESPONSE: This comment does not raise any substantive questions or concerns regarding the proposed amendments to Regulation 89; however, Watson's inquiry was routed to the proper division within the LDI for handling.

COMMENT 5: Martin Karp emailed an inquiry concerning the anticipated effective date of Regulation 89, as amended.

RESPONSE: This comment does not raise any substantive questions or concerns regarding the proposed amendments to Regulation 89; however, Karp's inquiry was routed to the proper division within the LDI for handling.

COMMENT 6: Pam Heinrich of the National Association for Fixed Annuities (NAFA) emailed an inquiry concerning the anticipated effective date of Regulation 89, as amended, and she further requested the LDI consider postponing the effective date of the regulation's amended provisions for six months.

RESPONSE: The LDI has considered the recommendation and decided against postponing the effective date of the proposed amendments to Regulation 89.

COMMENT 7: Monique Markey of Consulting by Monique emailed a request that the LDI "highlight the areas of the text that are being amended."

RESPONSE: This comment does not raise any substantive questions or concerns regarding the proposed amendments to Regulation 89; however, the inquiry was routed to the proper division within the LDI for handling.

COMMENT 8: Michael P. Austin, CFP emailed a comment to the LDI, suggesting that Regulation 89, as amended, “doesn’t go far enough.” Specifically, Austin argues that “insurance agents selling indexed annuities who are not variable licensed are not acting in the best interest of their clients.”

RESPONSE: This comment raises a licensing issue and is not particularly relevant to the substance and scope of the proposed amendments to Regulation 89.

COMMENT 9: Kim O’Brien of the Federation of Americans for Consumer Choice, Inc. submitted a comment in favor of the proposed amendments to Regulation 89 and commending the LDI for its efforts to adopt the National Association of Insurance Commissioners’ Model Regulation 275.

RESPONSE: This comment does not require any response or action.

COMMENT 10: Sarah E. Wood of the Insured Retirement Institute (IRI) submitted a comment in support of the proposed amendments to Regulation 89. The comment also contained a recommendation that the LDI consider postponing the effective date of the proposed amendments for six months from the date of the regulation’s final promulgation.

RESPONSE: The LDI has considered the recommendation and decided against postponing the effective date of the proposed amendments to Regulation 89.

Subject to legislative oversight, the LDI intends to submit Regulation 89 to the Office of the State Register for final publication in the September 2024 edition of the *Louisiana Register*. A copy of the summary report will be placed on the LDI’s website in accordance with [La. R.S. 49:966\(D\)\(1\)\(c\)](#).

Enclosures: Notice of Intent to Promulgate Regulation 89—Suitability in Annuity Transactions

Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, by faxing comments to (225) 342-1632, or electronically at regulations@ldi.la.gov. Comments will be accepted through the close of business, 4:30 p.m., June 10, 2024.

Timothy J. Temple
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 85
Valuation of Life Insurance Policies**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The proposed amended rule is not anticipated to result in implementation costs or savings to the state or local governmental units. The proposed rule is being amended to incorporate changes to the general calculation requirements for basic reserves and premium deficiency reserves that were made in the NAIC Model Regulation #830.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule changes will have no impact on state or local governmental revenues.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)
The proposed amended rule will have no impact on economic costs or benefits to directly affected persons, small businesses, or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule changes will have no impact upon competition and employment in the state.

Lance Herrin
Deputy Commissioner
2405#021

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

**NOTICE OF INTENT
Department of Insurance
Office of the Commissioner**

**Regulation 89—Suitability in Annuity Transactions
(LAC 37:XIII.Chapter 117)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Regulation 89—Suitability in Annuity Transactions. The purpose of the amendments to Regulation 89 is to implement the provisions of Act No. 73 of the 2023 Regular Session and to adopt changes made to date to the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 117. Regulation Number 89—Suitability in
Annuity Transactions**

§11701. Purpose

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

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation or to subject a producer to civil liability under the best interest standard of care outlined in §11711 or under standards governing the conduct of a fiduciary or a fiduciary relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:759 (June 2019), amended LR 50:

§11703. Scope

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:759 (June 2019), amended LR 50:

§11705. Authority

A. This regulation is promulgated under the authority of R.S. 22:11, R.S. 22:919, and R.S. 22:1576(B)(10).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:759 (June 2019), amended LR 50:

§11707. Exemptions

A. - A.2.b. ...

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. ...

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 NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:759 (June 2019), amended LR 50:

§11709. Definitions

Annuity—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.

Cash Compensation—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.

Consumer Profile Information—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:

1. age;
2. annual income;
3. financial situation and needs, including debts and other obligations;
4. financial experience;
5. insurance needs;
6. financial objectives;
7. intended use of the annuity;
8. financial time horizon;
9. existing assets or financial products, including investment, annuity, and insurance holdings;
10. liquidity needs;
11. liquid net worth;
12. risk tolerance, including, but not limited to, willingness to accept non-guaranteed elements in the annuity;
13. financial resources used to fund the annuity; and
14. tax status.

Continuing Education Credit or *CE credit*—continuing education credit as required by the Department.

Continuing Education Provider or *CE Provider*—an individual or entity that is approved to offer continuing education courses pursuant to Regulation 89.

Department—The Louisiana Department of Insurance.

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

Insurer—a company required to be licensed under the laws of this state to provide insurance products, including annuities.

Intermediary—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.

Material Conflict of Interest—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.

Non-Cash Compensation—any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support, and retirement benefits.

Non-Guaranteed Elements—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.

Producer—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 regulation, *producer* includes an insurer where no producer is involved.

Recommendation—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.

Replacement—a transaction in which an 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:

1. 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 policy values;
3. 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;
4. reissued with any reduction in cash value; or
5. used in a financed purchase.

SEC—The United States Securities and Exchange Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:759 (June 2019), amended LR 50:

§11711. Duties of Insurers and Producers

A. Best Interest Obligations. A producer, when making a sale or 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:

I.a. Care Obligation. The producer, in making a sale or 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 of the recommendation.

b. The requirements under Subparagraph a. of this Paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the sale or recommendation of an annuity.

c. The requirements under Subparagraph a. of this Paragraph 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 sale or recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.

d. The requirements under this Subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.

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

f. The requirements under Subparagraph a. of this Paragraph 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.

g. The requirements under Subparagraph a. of this Paragraph 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.

h. The requirements under Subparagraph a. of this Paragraph do not mean that the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

i. The requirements under Subparagraph a. of this Paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this Paragraph, 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.

j. 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 60 months.

k. Nothing in this regulation 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 regulation; 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.

2. Disclosure Obligation.

a. 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:

- (a). fixed annuities;
- (b). fixed indexed annuities;
- (c). variable annuities;
- (d). life insurance;
- (e). mutual funds;
- (f). stocks and bonds; and
- (g). 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:

- (a). from one insurer;
- (b). from two or more insurers; or
- (c). 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 Subparagraph b. of this Paragraph;

b. 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; and

c. 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.

3. 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.

4. Documentation Obligation. A producer shall at the time of recommendation or sale:

a. make a written record of any recommendation and the basis for the recommendation subject to this regulation;

b. 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

c. 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.

5. Application of the Best Interest Obligation. Any requirement applicable to a producer under this Subsection shall apply to every producer who has exercised material control or influence in the making of a sale or 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.

B. Transactions Not Based on a Recommendation.

1. Except as provided under Paragraph 2, a producer shall have no obligation to a consumer under Paragraph A.1 related to any annuity transaction if:

a. no recommendation is made;

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

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

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

2. An insurer's issuance of an annuity subject to Paragraph 1 shall be reasonable under all circumstances actually known to the insurer at the time the annuity is issued.

C. Supervision System

1. Except as permitted under Subsection B., 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.

2. An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this regulation, including, but not limited to, the following:

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

b. 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 §11712.

c. the insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its producers;

d. the insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that is 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;

e. the insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with Subsections A., B., D., and E. 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 Subparagraph prevents an insurer from complying with this Subparagraph by applying sampling procedures, or by confirming the consumer profile information or other required information under this Section after issuance or delivery of the annuity;

f. 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 Section;

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

h. 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

Subparagraph 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

i. the insurer shall annually provide a written report to senior management, including 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.

3.a. Nothing in this Subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this Subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to §11713 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Subparagraph b of this Paragraph.

b. An insurer's supervision system under this Subsection shall include supervision of contractual performance under this Subsection. 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.

4. An insurer is not required to include in its system of supervision:

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

b. 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.

D. Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

1. truthfully responding to an insurer's request for confirmation of suitability information;

2. filing a complaint; or

3. cooperating with the investigation of a complaint.

E. Safe Harbor

1. Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this regulation. This Subsection 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, sale, or recommendation at issue. However, nothing in this Subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this regulation.

2. Nothing in Paragraph 1. shall limit the insurer's obligation to comply with §11711.C.1, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

3. For Paragraph 1 to apply, an insurer shall:

a. monitor the relevant conduct of the financial professional seeking to rely on Paragraph 1. or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws using information collected in the normal course of an insurer's business; and

b. provide to the entity responsible for supervising the financial professional seeking to rely on Paragraph 1., such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

4. For purposes of this Subsection, "financial professional" means a producer that is regulated and acting as:

a. a broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

b. an investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

c. a plan fiduciary under Section 3(21) of ERISA or fiduciary under Section 4975(e)(3) of the IRC or any amendments or successor statutes thereto.

5. For purposes of this Subsection, "comparable standards" means:

a. 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 regulations thereto;

b. with respect to investment advisers registered under federal or state 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 the Investment Advisers Act of 1940 or applicable state securities law, including, but not limited to, the Form ADV and interpretations; and

c. with respect to 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 NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:760 (June 2019), amended LR 50:

§11712. Producer Training

A. 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 Section.

B.1.a. A producer who engages in the sale of annuity products shall complete a one-time, four-credit training

course approved by the Department and provided by a Department-approved education provider.

b. Producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this Subsection within six months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this Subsection has been completed.

2. The minimum length of the training required under this Subsection shall be sufficient to qualify for at least four CE credits but may be longer.

3. The training required under this Subsection 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 product-specific annuity contract features affect consumers;
- d. the application of income taxation of qualified and non-qualified annuities;
- e. the primary uses of annuities; and
- f. appropriate standard of conduct, sales practices, replacement and disclosure requirements.

4. Providers of courses intended to comply with this Subsection 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.

5. A provider of an annuity training course intended to comply with this Subsection 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 this regulation.

6. A producer who has completed an annuity training course approved by the Department prior to the effective date of this regulation shall, within six months, complete either:

- a. a new four-credit training course approved by the Department after the effective date of this regulation; or
- b. an additional one-time, one-credit training course approved by the Department and provided by a Department-approved education provider on appropriate sales practices, replacement, and disclosure requirements under this regulation.

7. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with this regulation.

8. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with this regulation.

9. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this Subsection shall be deemed to satisfy the training requirements of this Subsection in this state.

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

11. An insurer shall verify that a producer has completed the annuity training course required under this Subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this Subsection 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 NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 50:

§11713. Compliance Mitigation; Penalties; Enforcement

A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its producer, the Department may order:

1. an insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer, an entity contracted to perform the insurer's supervisory duties, or by the producer;
2. a general agency, independent agency, or producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this regulation; and
3. appropriate penalties and sanctions.

B. Any applicable penalty for a violation of this 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:761 (June 2019), amended LR 50:

§11715. Recordkeeping

A. 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 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.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:761 (June 2019), amended LR 50:

§11717. Severability

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006), amended LR 45:761 (June 2019), amended LR 50:

§11719. Effective Date

A. Regulation 89, as amended, shall become effective upon final promulgation in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 45:761 (June 2019), amended LR 50:

§11721. Appendices

A. Insurance Agent (Producer) Disclosure for Annuities

**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 (1) 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 You. 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), 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.

Drafting Note: This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with a more precise disclosure, including a written consulting, advising, or financial planning agreement.

Drafting Note: The acknowledgement and signature should be in immediate proximity to the disclosure language.

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

B. Consumer Refusal to Provide Information

**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 [this state] 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

C. Consumer Decision to Purchase an Annuity Not Based on a Recommendation

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 [this state].

Customer Signature

Date

Agent/Producer Signature

Date

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:919, 22:1576, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 50:

Family Impact Statement

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed amended regulation should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed amended

regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Poverty Impact Statement

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental, and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore,

there is no less intrusive or less costly alternative method of achieving the purpose of the proposed regulation.

Provider Impact Statement

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed amended regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

Public Comments

Interested persons who wish to make comments may do so by writing to Philip Dominique, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, or by faxing comments to (225) 342-1632, or electronically at regulations@ldi.la.gov. Comments will be accepted through the close of business, 4:30 p.m., June 10, 2024.

Tim Temple
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulation 89—Suitability in
Annuity Transactions**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed amended rule is not anticipated to result in implementation costs or savings to the state or local governmental units. The proposed rule is being amended to implement the provisions of Act No. 73 of the 2023 Regular Session and to adopt changes made to date to the National Association of Insurance Commissioners’ Suitability in Annuity Transactions Model Regulation.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed amended rule will have no impact on state or local governmental revenues.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR
NONGOVERNMENTAL GROUPS (Summary)**

The proposed amended rule shall protect insurers and consumers by providing for a best interest obligation when making a sale or recommendation of an annuity. The insurer and producer 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 insurer’s financial interest ahead of the consumer’s interest.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed amended rule does not affect competition and employment in the state.

Chris Cerniauskas
Chief of Staff
2405#026

Alan M. Boxberger
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 129—Surplus Lines Insurance Refund or Credit
of Gross Premium Taxes (LAC 37:XIII.Chapter 197)**

Editor’s Note: This Notice of Intent is being republished to correct an error within the public comment period. The original Notice of Intent may be viewed in the April 20, 2024 edition of the *Louisiana Register* on pages 595-597.

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to promulgate Regulation 129—Surplus Lines Insurance Refund or Credit of Gross Premium Taxes. Regulation 129 defines the requirements to receive a surplus lines insurance refund or credit for taxes paid on gross premium received by the Louisiana Department of Insurance.

Title 37

INSURANCE

Part XIII. Regulations

**Chapter 197. Regulation Number 129—Surplus Lines
Insurance Refund or Credit of Gross
Premium Taxes**

§19701. Purpose

A. The purpose of this regulation is to define the requirements to receive a surplus line insurance refund for taxes paid on gross premium received by the Louisiana Department of Insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 22:439.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 50:

§19703. Applicability and Scope

A. Regulation 129 shall apply to impositions of a tax of four and eighty-five one hundredths of one percent per annum on the gross premium without regard to the location of the covered property, risk, or exposure for all insurance placed through a Louisiana licensed surplus lines broker with a surplus lines insurer or other unauthorized insurer and for which Louisiana is the home state of the policyholder as defined in R.S. 22:46.

B. The refund or credit shall only apply to Louisiana licensed surplus lines brokers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 22:439.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 50:

§19707. Authorization of Refunds or Credit

A. For the purpose of this Chapter, a refund or credit of gross premium taxes is authorized when there is a payment of tax when none was due.

B. The commissioner may make a refund or credit of each payment where it is determined that the payment was the result of an error, omission, or a mistake of fact of