

## INSURANCE DIVISION[191]

### Notice of Intended Action

#### **Proposing rule making related to best interest standard for insurance securities and professionals and providing an opportunity for public comment**

The Insurance Division hereby proposes to amend Chapter 15, “Unfair Trade Practices,” and Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 502.605 and 507B.12.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 502.501, 502.501A and 507B.4A.

#### *Purpose and Summary*

The proposed rule making would require annuity agents and securities agents to act in the best interest of their customers. These standards ensure consumers’ interests are put first. The rule making follows efforts by the National Association of Insurance Commissioners to develop a model Suitability in Annuity Transactions Model Regulation that is harmonized with rule making by the U.S. Securities and Exchange Commission (SEC). Iowans choose professional financial services either through fee arrangements or through transactional commission arrangements based on their particular needs. Requiring high quality financial advice that fits the particular needs, objectives and situation of the individual Iowan has always been our primary purpose.

This rule making will preserve consumer choice so that many more middle-class Iowans will retain access to retirement education and security that they choose. The detailed regulatory framework promotes informing consumers about risks, benefits and costs of any recommended transaction.

This standard requires the financial professional to always put the consumer’s interest first and to only make recommendations that match the particular Iowan’s needs, objectives and situation. This proposal is consistent with the efforts of the SEC and will be very beneficial to consumers.

#### *Fiscal Impact*

The fiscal impact cannot be determined.

The proposed amendments are necessary to coordinate Iowa law with federal law in the wake of the Securities and Exchange Commission-implemented Regulation Best Interest. The proposed amendments will materially increase the Division’s regulatory responsibilities by adding a new state level best interest obligation to the existing suitability standards. Expenditure of Division resources will increase in order to ensure compliance with the rules. The resources available for these purposes are unclear as is the extent of a future examination program that focuses on the new obligations. There will be no increase in revenues as a result of this rule making.

Overall, the existing Division rules have compliance costs for industry participants. The Division expects the proposed amendments to have additional implementation costs as firms update their internal systems to comply with the new requirements. The extent and materiality of these one-time costs are indeterminate. The costs will be somewhat mitigated in that the insurance rule provides a safe harbor for financial professionals who comply with comparable federal standards. Coordinating with federal duties would add no additional burdens in order to comply with the best interest standard. The proposed

rule making requires insurers to have a supervision system and to provide training. Neither of these are new requirements, but the rule making could result in the industry's having to expend resources to refine or update its supervision system and training programs. Those costs are indeterminate. Moreover, the ongoing costs of complying with the proposed rule making, after the one-time implementation costs, are uncertain as well.

For broker-dealers and agents, the rule making roughly mirrors recently adopted federal requirements. Based on that, the Division does not expect material implementation costs for broker-dealers.

Overall, while the rule making may result in a fiscal impact to the industry, there is an overall benefit in that the Division rules coordinate with federal standards.

Purchasers of annuities and securities investors should benefit from the proposed rule making due to enhanced standards of care placed on licensed industry professionals. It is not possible to quantify the impact in any given transaction, but overall the expectation is that purchasers/investors will end up with products that better fit their needs.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

The Division's general waiver provisions of 191—Chapter 4 apply to these rules.

#### *Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Division no later than 4 p.m. on April 28, 2020. Comments should be directed to:

Tracy Swalwell  
Iowa Insurance Division  
Two Ruan Center  
601 Locust Street, Fourth Floor  
Des Moines, Iowa 50309  
Phone: 515.725.1249  
Fax: 515.281.3059  
Email: [tracy.swalwell@iid.iowa.gov](mailto:tracy.swalwell@iid.iowa.gov)

#### *Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held via conference call as follows:

April 28, 2020  
10 to 11 a.m.

Persons wishing to attend the conference call hearing should contact Tracy Swalwell. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Tracy Swalwell prior to the hearing to facilitate an orderly hearing. Persons may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 191—15.72(507B) as follows:

**191—15.72(507B) Purpose.** The purpose of these rules is to require producers, as defined in rule 191—15.74(507B), to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the times of the transactions are appropriately effectively addressed. Nothing herein shall be construed to create or imply a private cause of action for a violation of these rules or to subject a producer to civil liability under the best interest standard of care outlined in rule 191—15.75(507B) or under standards governing the conduct of a fiduciary or a fiduciary relationship.

ITEM 2. Amend rule 191—15.73(507B) as follows:

**191—15.73(507B) Applicability and scope.**

**15.73(1)** These rules shall apply to any sale or recommendation to purchase, exchange or replace of an annuity made to a consumer on or after January 1, 2011, by an insurance producer, or by an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended 2021.

**15.73(2)** Unless otherwise specifically included, ~~this rule shall~~ these rules do not apply to transactions involving:

*a.* Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to these rules;

*b.* Contracts used to fund the following:

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

(2) A plan described by Section 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC) if established or maintained by an employer;

(3) 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

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

~~(5)~~ *c.* Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

~~(6)~~ *d.* Formal prepaid funeral contracts.

ITEM 3. Amend rule 191—15.74(507B) as follows:

**191—15.74(507B) Definitions.** For purposes of this division:

*“Annuity”* means an annuity that is an insurance product under state law, individually solicited, whether the product is classified as an individual or group annuity.

*“Cash compensation”* means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

“Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:

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 nonguaranteed elements in the annuity;
13. Financial resources used to fund the annuity; and
14. Tax status.

“Continuing education credit” or “CE credit” means one credit as defined in rule 191—11.2(505,522B).

“Continuing education provider” or “CE provider” means a CE provider as defined in rule 191—11.2(505,522B).

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

~~“Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.~~

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

“Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.

“Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. “Material conflict of interest” does not include cash compensation or noncash compensation.

“Noncash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

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

“Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of these rules, “producer” includes an insurer where no producer is involved.

“Recommendation” means advice provided by ~~an insurance a producer, or an insurer where no producer is involved,~~ to an individual consumer that ~~results~~ 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” means a transaction in which a new ~~policy or contract~~ annuity 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~~ whether or not a producer is involved, that, by reason of the transaction, an existing annuity or other insurance policy ~~or contract~~ 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.

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

- ~~1. Age;~~
- ~~2. Annual income;~~
- ~~3. Financial situation and needs, including the financial resources used for the funding of the annuity;~~
- ~~4. Financial experience;~~
- ~~5. Financial objectives;~~
- ~~6. Intended use of the annuity;~~
- ~~7. Financial time horizon;~~
- ~~8. Existing assets, including investment and life insurance holdings;~~
- ~~9. Liquidity needs;~~
- ~~10. Liquid net worth;~~
- ~~11. Risk tolerance; and~~
- ~~12. Tax status.~~

“SEC” means the United States Securities and Exchange Commission.

ITEM 4. Amend rule 191—15.75(507B) as follows:

**191—15.75(507B) Duties of insurers and of insurance producers.**

15.75(1) *Best interest obligations.* 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 the consumer’s investments and other insurance products and as to the consumer’s financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following: A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest. A producer has acted in the best interest of the consumer if the producer has satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

a. *Care obligation.* The

(1) The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:

1. Know the consumer’s financial situation, insurance needs and financial objectives;
2. Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
3. 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
4. Communicate the basis or bases of the recommendation.

(2) The requirements under subparagraph 15.75(1)“a”(1) include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

(3) The requirements under subparagraph 15.75(1)“a”(1) require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the

consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.

(4) The requirements under this subrule do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in these rules.

(5) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination 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.

(6) The requirements under subparagraph 15.75(1) "a"(1) include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

(7) The requirements under subparagraph 15.75(1) "a"(1) apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

(8) The requirements under subparagraph 15.75(1) "a"(1) do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

(9) The requirements under subparagraph 15.75(1) "a"(1) 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.

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

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

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

(11) 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.

*b. Disclosure obligation.*

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

1. A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

2. An affirmative statement on whether the producer is licensed and authorized to sell the following products:

- Fixed annuities;
- Fixed indexed annuities;
- Variable annuities;
- Life insurance;
- Mutual funds;
- Stocks and bonds; and
- Certificates of deposit;

3. 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:

- One insurer;
- From two or more insurers; or
- From two or more insurers although primarily contracted with one insurer.

4. A description of the sources and types of cash compensation and noncash 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

5. A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph 15.75(1) "b"(2);

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

1. 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

2. Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

(3) 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 reasonably informed of various features of the recommended 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 nonguaranteed elements of the annuity; insurance and investment components; and market risk;

~~b. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, death benefit, or living benefit;~~

~~e. 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 the consumer's suitability information; and~~

~~d. 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 benefit, living benefit, 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.~~

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

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

(1) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

(2) Obtain a consumer-signed statement on a form substantially similar to Appendix VII documenting:

1. A customer's refusal to provide the consumer profile information, if any; and

2. A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

(3) Obtain a consumer-signed statement on a form substantially similar to Appendix VIII acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

*e. Application of the best interest obligation.* Any requirement applicable to a producer under this subrule shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

~~15.75(2)~~ 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 obtain the consumer's suitability information.

~~15.75(3)~~ Except as permitted under subrule 15.75(4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

~~15.75(4)~~ **15.75(2)** Exceptions. *Transactions not based on a recommendation.*

~~a.~~ Except as provided under paragraph 15.75(4) "b," neither an insurance 15.75(2) "b," a producer, nor an insurer, shall have any no obligation to a consumer under subrule 15.75(1) or 15.75(3) paragraph 15.75(1) "a" related to any annuity transaction if:

- (1) No recommendation is made;
- (2) A recommendation was made and was later found to have been prepared based on inaccurate material information provided by the consumer;
- (3) A consumer refuses to provide relevant suitability consumer profile information and the annuity transaction is not recommended; or
- (4) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

~~b.~~ An insurer's issuance of an annuity subject to paragraph 15.75(4) "a" 15.75(2) "a" shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

~~15.75(5)~~ 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 subrule 15.75(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.

~~15.75(6)~~ **15.75(3)** An insurer's duty to supervise. *Supervision system.*

~~a.~~ Except as permitted under subrule 15.75(2), 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.

~~a. b.~~ An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with rules 191—15.72(507B) through 191—15.78(507B) including, but not limited to, the following:

(1) The insurer shall establish and maintain reasonable procedures to inform its insurance producers of the requirements of these rules and shall incorporate the requirements of these rules into relevant insurance producer training manuals;

(2) The insurer shall establish and maintain standards for insurance producer product training and shall establish and maintain reasonable procedures to require its insurance producers to comply with the requirements of rule 191—15.76(507B);



(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 establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable ~~the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives.~~ Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(5) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not suitable in compliance with subrules 15.75(1), 15.75(2), 15.75(4) and 15.75(5). These procedures may include, but are not limited to, confirmation of ~~consumer suitability~~ 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 suitability the consumer profile information or other required information under this rule after issuance or delivery of the annuity; ~~and~~

(6) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this rule;

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

(8) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash 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

~~(6)~~ (9) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

~~b. c.~~ Third-party supervisor.

(1) Nothing in this subrule restricts an insurer from contracting for performance of a function (including maintenance of procedures) required ~~under paragraph 15.75(6) "a."~~ this subrule. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule ~~191—15.73(507B) 191—15.77(507B)~~ regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph ~~15.75(6) "b"(2) 15.75(3) "c"(2).~~

(2) An insurer's supervision system under ~~paragraph 15.75(6) "a"~~ this subrule shall include supervision of contractual performance under this subrule including, but not limited to, the following:

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

2. 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.

~~e. d.~~ An insurer is not required to include in its system of supervision ~~an insurancee;~~

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

(2) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

~~15.75(7)~~ **15.75(4)** *Prohibited practices.* ~~An insurance producer shall not~~ Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

- a. Truthfully responding to an insurer's request for confirmation of ~~suitability~~ the consumer profile information;
- b. Filing a complaint; or
- c. Cooperating with the investigation of a complaint.

~~15.75(8)~~ **15.75(5)** *Compliance with FINRA. Safe harbor.*

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

b. Nothing in paragraph 15.75(5) "a" shall limit the insurer's obligation to comply with paragraph 15.75(3) "a," although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

~~b. c.~~ For paragraph ~~15.75(8) "a"~~ 15.75(5) "a" to apply, an insurer shall:

(1) Monitor the ~~FINRA member broker-dealer~~ relevant conduct of the financial professional seeking to rely on paragraph 15.75(5) "a" or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws using information collected in the normal course of an insurer's business; and

(2) Provide to the ~~FINRA member broker-dealer~~ entity responsible for supervising the financial professional seeking to rely on paragraph 15.75(5) "a," such as the financial professional's broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist the FINRA member broker-dealer such entity to maintain its supervision system.

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

(1) A broker-dealer registered under federal securities laws or a registered representative of a broker-dealer;

(2) An investment adviser registered under federal securities laws or an investment adviser representative associated with the federal registered investment adviser; or

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

e. For purposes of this subrule, "comparable standards" means:

(1) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;

(2) With respect to investment advisers registered under federal 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, including, but not limited to, the Form ADV and interpretations; and

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

ITEM 5. Amend rule 191—15.76(507B) as follows:

**191—15.76(507B) Insurance producer Producer training.**

**15.76(1)** ~~An insurance A~~ 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 A~~ producer may rely on insurer-provided product-specific training standards and materials to comply with this subrule.

**15.76(2)** Training required.

*a.* One-time course.

(1) ~~An insurance A~~ producer who engages in the sale of annuity products shall complete a one-time four-credit training course approved by the ~~Iowa insurance division~~ commissioner and provided by an education provider approved by the ~~insurance division~~ commissioner.

(2) ~~Insurance producers~~ Producers may not engage in the sale of annuities until the annuity training course required under this rule has been completed.

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

*c.* The training required under this rule shall include information on the following topics:

(1) The types of annuities and various classifications of annuities;

(2) Identification of the parties to an annuity;

(3) How fixed, variable, ~~and indexed,~~ and other product-specific annuity contract provisions affect consumers;

(4) The application of income taxation of qualified and nonqualified annuities;

(5) The primary uses of annuities;

(6) Appropriate standard of conduct sales practices; and

(7) Replacement and disclosure requirements.

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

*e.* A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this state and comply with the rules and guidelines applicable to ~~insurance~~ producer continuing education courses as set forth in 191—Chapter 11.

*f.* A producer who has completed an annuity training course approved by the commissioner prior to January 1, 2021, shall, before July 1, 2021, complete either:

(1) A new four-credit training course approved by the commissioner after January 1, 2021; or

(2) An additional one-time one-credit training course approved by the commissioner and provided by the commissioner-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.

~~f.~~ *g.* Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with 191—Chapter 11.

~~g.~~ *h.* Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with 191—Chapter 11.

~~h.~~ *i.* Satisfaction of the training requirements of another state that are substantially similar to the provisions of this subrule shall be deemed to satisfy the training requirements of this subrule in this state.

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

~~i.~~ *k.* An insurer shall verify that ~~an insurance a~~ producer has completed the annuity training course required under this subrule before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subrule by obtaining certificates of completion of the training course or obtaining reports provided by Iowa insurance commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved continuing education providers.

ITEM 6. Amend rule 191—15.77(507B) as follows:

**191—15.77(507B) Compliance; mitigation; penalties; enforcement.**

**15.77(1)** 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 ~~insurance~~ producer, the commissioner may order:

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

b. A general agency, independent agency or the ~~insurance~~ producer to take reasonably appropriate corrective action for any consumer harmed by the ~~insurance~~ producer's violation of the rules of this division; and

c. Appropriate penalties and sanctions.

**15.77(2)** Any applicable penalty under Iowa Code chapter 507B for a violation of the rules in Division V of this chapter may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

**15.77(3)** The authority to enforce compliance with these rules is vested exclusively with the commissioner.

ITEM 7. Amend rule 191—15.78(507B) as follows:

**191—15.78(507B) Record keeping.**

**15.78(1)** Insurers, general agents, independent agencies, and ~~insurance~~ producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer (including summaries of oral disclosures) and other information used in making the recommendations that were the basis for insurance transactions for ten 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~~ a producer.

**15.78(2)** Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

ITEM 8. Adopt the following new appendices in **191—Chapter 15**, Appendices VI, VII, and VIII, as follows:

APPENDIX VI

**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:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from:	

**How I'm Paid for My Work:**

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

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

- Commission, which is usually paid by the insurance company or other sources. If other sources, describe: \_\_\_\_\_.
- Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
- Other (Describe): \_\_\_\_\_.

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

I may also receive other indirect compensation resulting from this transaction (sometimes called "noncash" 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 more precise disclosure, including a written consulting, advising or financial planning agreement.

**Drafting Note:** The acknowledgment 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

APPENDIX VII  
**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

APPENDIX VIII

**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

ITEM 9. Adopt the following **new** rule 191—50.104(502):

**191—50.104(502) Best interest obligations in the brokerage business.**

**50.104(1)** In addition to the definitions in Iowa Code chapter 502 and those of 191—50.1(502), the following definitions apply to this rule:

“*Conflict of interest*” means an interest that might incline a broker-dealer or agent—consciously or unconsciously—to make a recommendation that is not disinterested.

“*Investment profile*” means the following information, but is not limited to, the retail investor’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the retail investor may disclose to the broker, dealer, or a natural person who is an associated person of a broker or dealer in connection with a recommendation.

“*Retail investor*” means a natural person, or the legal representative of such natural person, who receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer or agent primarily for personal, family, or household purposes.

“*Securities transaction*” means an offer, sale, or purchase of securities involving a retail investor.

**50.104(2)** A broker-dealer or agent failing to comply with the following requirements when recommending a customer purchase, sell or exchange a security engages in an act, practice, or course of business which operates or would operate as a fraud or deceit under Iowa Code section 502.501(3) and a manipulative, deceptive or other fraudulent scheme, device, or contrivance under Iowa Code section 502.501A:

*a.* A broker-dealer or agent shall have a reasonable basis to believe that a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor is in the best interest of the retail investor at the time the recommendation is made;

*b.* A broker-dealer or agent shall have a reasonable basis to believe that a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor does not place the financial or other interest of the broker-dealer or agent making the recommendation ahead of the interest of the retail investor;

*c.* A broker-dealer shall establish, maintain or enforce policies and procedures reasonably designed to:

(1) Identify all conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor;

(2) Eliminate or, at a minimum, disclose in accordance with paragraph 50.104(3) “*b*,” all conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor;

(3) Mitigate any conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor that create an incentive for an agent to place the interest of the broker-dealer or agent ahead of the interest of the retail investor;

(4) Identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail investor and any conflicts of interest associated with such limitations, in accordance with paragraph 50.104(3) “*b*,” and prevent such limitations and associated conflicts of interest from causing the broker-dealer or agent to make recommendations that place the interest of the broker-dealer or agent ahead of the interest of the retail investor; and

(5) Identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time; and

*d.* A broker-dealer shall establish, maintain, or enforce policies and procedures reasonably designed to achieve compliance with the obligations in this rule.

**50.104(3)** The best interest obligation in paragraphs 50.104(2) “*a*” and “*b*” shall be satisfied if the broker-dealer or agent satisfies the following care and disclosure obligations:

*a. Care obligation.* The broker-dealer or agent, in making a recommendation, exercises reasonable diligence, care, and skill to:

(1) Know and understand the retail investor’s investment profile, including the retail investor’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience,

investment time horizon, liquidity needs, risk tolerance, and any other information the retail investor may disclose to the broker-dealer or agent in connection with a recommendation;

(2) Know and understand the potential risks, rewards, and costs associated with the recommendation;

(3) Have a reasonable basis to believe the recommendation, including its potential risks, rewards, and costs, effectively addresses the retail investor's investment profile, including the retail investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance and other known information, and does not place the financial or other interest of the broker-dealer or agent ahead of the interest of the retail investor;

(4) Have a reasonable basis to believe that a series of recommendations, even if in the retail investor's best interest when viewed in isolation, is not excessive and effectively addresses the retail investor's investment profile, including the retail investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance and other known information when taken together in light of the retail investor's investment profile and does not place the financial or other interest of the broker-dealer or agent making the series of recommendations ahead of the interest of the retail investor; and

(5) Have a reasonable basis to believe that prior to or at the time of the recommendation the retail investor has been reasonably informed of the basis of the recommendation and the potential risks, rewards, and costs associated with the recommendation.

*b. Disclosure obligation.* The broker-dealer or agent, prior to or at the time of the recommendation, provides the retail investor full and fair disclosure of:

(1) All material facts relating to the scope and terms of the relationship with the retail investor, including:

1. That the broker-dealer or agent is acting as a broker-dealer or agent with respect to the recommendation;

2. The material fees and costs that apply to the retail investor's transactions, holdings, and accounts; and

3. The type and scope of services provided to the retail investor, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail investor; and

(2) All material facts relating to conflicts of interest that are associated with the recommendation.