

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 482 Department or Agency Department of Insurance*

Rule No. Chapter 482-1-137

Rule Title: Suitability in Annuity Transactions.

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? N/A*

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? N/A*

Is there another, less restrictive method of regulation available that could adequately protect the public? N/A*

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? N/A*

Is the increase in costs, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A*

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? N/A*

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? N/A*

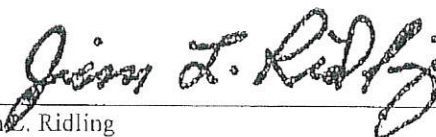
Does the proposed rule have an economic impact? N/A*

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Sections 27-2-17 and 27-7-43, Code of Alabama 1975, and that it complies with all applicable filing requirements of the Alabama Insurance Code.*

Signature of certifying officer


Jim E. Ridling
Commissioner of Insurance

Date: October 21, 2020

*Note: The Alabama Department of Insurance is exempt from the Alabama Administrative Procedures Act pursuant to Section 41-22-2(e), Code of Alabama 1975.

REC'D & FILED

OCT 21 2020

LEGISLATIVE SVC AGENCY

Alabama Department of Insurance

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Insurance

RULE NO. & TITLE: Chapter 482-1-137: Suitability in Annuity Transactions.

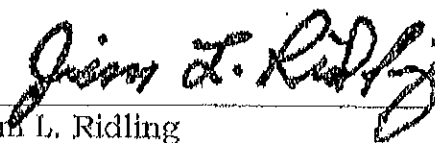
INTENDED ACTION: Amend existing rule.

SUBSTANCE OF PROPOSED ACTION: The Commissioner of Insurance is proposing to amend the existing insurance regulation which sets forth requirements concerning the suitability of the sale of annuities. The primary change is to add requirements relative to "best interest obligations" as reflected in the model developed by the National Association of Insurance Commissioners. The amended rule will become effective January 1, 2021.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may submit data, views, or arguments in writing at any time prior to December 7, 2020, to the Alabama Department of Insurance, Attention: Legal Division, Post Office Box 303351, Montgomery, Alabama 36130-3351, or orally by appearing at the public hearing, Suite 502, RSA Tower, 201 Monroe Street, Montgomery, Alabama, beginning at 10:00 AM, on December 8, 2020.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
December 7, 2020

CONTACT PERSON AT AGENCY: Reyn Norman
General Counsel


Jim L. Ridling
Commissioner of Insurance

ALABAMA DEPARTMENT OF INSURANCE
INSURANCE REGULATION

CHAPTER 482-1-137

SUITABILITY IN ANNUITY TRANSACTIONS

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1 **482-1-137-.01 Authority.** This chapter is issued under the
2 authority of Sections 27-2-17 & 27-12-1, et seq., Code of
3 Alabama 1975.

4 **Author:** Commissioner of Insurance
5 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
6 1, et seq.
7 **History:** New May 19, 2006, Effective January 1, 2007

8 **482-1-137-.02 Purpose.**

9 (1) The purpose of this chapter is to require producers,
10 as defined in this chapter, to satisfy the requirements and
11 standards set forth herein when making a recommendation of an
12 annuity and to require insurers to establish and maintain a
13 system to supervise recommendations ~~and to set forth standards~~
14 ~~and procedures for recommendations to consumers that result in~~
15 ~~a transaction involving annuity products~~ so that the insurance
16 needs and financial objectives of consumers at the time of the
17 transaction are ~~appropriately~~ effectively addressed.

18 (2) Nothing herein shall be ~~constructed~~ construed to
19 create or imply a private cause of action for a violation of
20 this chapter or to subject a producer to civil liability under
21 the standard of care outlined in Rule 482-1-137-.06 or under

1 standards governing the conduct of a fiduciary or a fiduciary
2 relationship.

3 **Author:** Commissioner of Insurance
4 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
5 1, et seq.
6 **History:** New May 19, 2006, Effective January 1, 2007; Revised
7 July 21, 2016, Effective January 1, 2017; Revised ___, 2020,
8 Effective January 1, 2021

9 **482-1-137.03 Scope.** This chapter shall apply to any sale or
10 recommendation to purchase, exchange, or replace of an annuity
11 made to a consumer by an insurance producer, or an insurer
12 where no producer is involved, that results in the purchase,
13 exchange, or replacement recommended.

14 **Author:** Commissioner of Insurance
15 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
16 1, et seq.
17 **History:** New May 19, 2006, Effective January 1, 2007; Revised
18 July 21, 2016, Effective January 1, 2017; Revised ___, 2020,
19 Effective January 1, 2021

20 **482-1-137-.04 Exemptions.** Unless otherwise specifically
21 included, this chapter shall not apply to transactions
22 involving:

23 (a) Direct response solicitations where there is no
24 recommendation based on information collected from the
25 consumer pursuant to this chapter.

1 (b) Contracts used to fund any of the following:

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

5 (2) A plan described by Sections 401(a), 401(k), 403(b),
6 408(k) or 408(p) of the Internal Revenue Code (IRC), as
7 amended, if established or maintained by an employer.

8 (3) A government or church plan defined in Section 414 of
9 the IRC, a government or church welfare benefit plan, or a
10 deferred compensation plan of a state or local government or
11 tax exempt organization under Section 457 of the IRC.

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

14 ~~(5)-(c)~~ Settlements of or assumptions of liabilities
15 associated with personal injury litigation or any dispute or
16 claim resolution process.

17 ~~(6)-(d)~~ Formal prepaid funeral contracts.

18 **Author:** Commissioner of Insurance

19 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
20 1, et seq.

21 **History:** New May 19, 2006, Effective January 1, 2007; Revised
22 July 21, 2016, Effective January 1, 2017; Revised ___, 2020,
23 Effective January 1, 2021

1 **482-1-137-.05 Definitions.** The following definitions shall
2 also apply in this chapter:

3 (a) **ANNUITY.** An annuity that is an insurance product
4 under state law that is individually solicited, whether the
5 product is classified as an individual or group annuity.

6 (b) CASH COMPENSATION. Any discount, concession, fee,
7 service fee, commission, sales charge, loan, override, or cash
8 benefit received by a producer in connection with the
9 recommendation or sale of an annuity from an insurer,
10 intermediary, or directly from the consumer.

11 (c) CONSUMER PROFILE INFORMATION. Information that is
12 reasonably appropriate to determine whether a recommendation
13 addresses the consumer's financial situation, insurance needs
14 and financial objectives, including, at a minimum, all of the
15 following:

16 1. Age.

17 2. Annual income.

18 3. Financial situation and needs, including debts and
19 other obligations.

20 4. Financial experience.

21 5. Insurance needs.

1 6. Financial objectives.

2 7. Intended use of the annuity.

3 8. Financial time horizon.

4 9. Existing assets or financial products, including
5 investment, annuity and insurance holdings.

6 10. Liquidity needs.

7 11. Liquid net worth.

8 12. Risk tolerance, including but not limited to,
9 willingness to accept non-guaranteed elements in the annuity.

10 13. Financial resources used to fund the annuity.

11 14. Tax status.

12 ~~(b)~~(d) CONTINUING EDUCATION CREDIT or CE CREDIT. One
13 continuing education credit as defined in Alabama Insurance
14 Regulation 110, Chapter 482-1-110.

15 ~~(e)~~(e) CONTINUING EDUCATION PROVIDER or CE PROVIDER. An
16 individual or entity that is approved to offer continuing
17 education courses pursuant to Alabama Insurance Regulation
18 110, Chapter 482-1-110.

19 ~~(d)~~(f) FINRA. The Financial Industry Regulatory
20 Authority or a successor agency.

1 ~~(e)~~(g) INSURER. A company required to be licensed under
2 the laws of this state to provide insurance products,
3 including annuities.

4 (h) INTERMEDIARY. An entity contracted directly with an
5 insurer or with another entity contracted with an insurer to
6 facilitate the sale of the insurer's annuities by producers.

7 (i) (1) MATERIAL CONFLICT OF INTEREST. A financial
8 interest of the producer in the sale of an annuity that a
9 reasonable person would expect to influence the impartiality
10 of a recommendation.

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

13 (j) NON-CASH COMPENSATION. Any form of compensation that
14 is not cash compensation, including, but not limited to,
15 health insurance, office rent, office support and retirement
16 benefits.

17 (k) NON-GUARANTEED ELEMENTS. The premiums, credited
18 interest rates (including any bonus), benefits, values,
19 dividends, non-interest based credits, charges or elements of
20 formulas used to determine any of these, that are subject to
21 company discretion and are not guaranteed at issue. An element

1 is considered non-guaranteed if any of the underlying non-
2 guaranteed elements are used in its calculation.

3 ~~(f)~~ (1) INSURANCE PRODUCER. A person or entity required
4 to be licensed under the laws of this state to sell, solicit
5 or negotiate insurance, including annuities. For purposes of
6 this regulation, "producer" includes an insurer where no
7 producer is involved.

8 ~~(g)~~ (m) (1) RECOMMENDATION. Advice provided by an
9 insurance a producer, or an insurer where no producer is
10 involved, to an individual consumer that results was intended
11 to result or does result in a purchase, an exchange, or a
12 replacement of an annuity in accordance with that advice.

13 (2) "Recommendation" does not include general
14 communication to the public, generalized customer services
15 assistance or administrative support, general educational
16 information and tools, prospectuses, or other product and
17 sales material.

18 ~~(h)~~ (n) REPLACEMENT. A transaction in which a new policy
19 or contract annuity is to be purchased, and it is known or
20 should be known to the proposing producer, or to the proposing
21 insurer if there is no whether or not a producer is involved,
22 that by reason of the transaction, an existing annuity or

1 other insurance policy ~~or contract~~ has been or is to be any of
2 the following:

3 (1) Lapsed, forfeited, surrendered or partially
4 surrendered, assigned to the replacing insurer or otherwise
5 terminated.

6 (2) Converted to reduced paid-up insurance, continued as
7 extended term insurance, or otherwise reduced in value by the
8 use of nonforfeiture benefits or other policy values.

9 (3) Amended so as to effect either a reduction in
10 benefits or in the term for which coverage would otherwise
11 remain in force or for which benefits would be paid.

12 (4) Reissued with any reduction in cash value.

13 (5) Used in a financed purchase.

14 (o) SEC. The United States Securities and Exchange
15 Commission.

16 ~~(i) SUITABILITY INFORMATION. Information that is~~
17 ~~reasonably appropriate to determine the suitability of a~~
18 ~~recommendation, including all of the following:~~

19 ~~(1) Age.~~

20 ~~(2) Annual income.~~

1 ~~(3) Financial situation and needs, including the~~
2 ~~financial resources used for the funding of the annuity.~~

3 ~~(4) Financial experience.~~

4 ~~(5) Financial objectives.~~

5 ~~(6) Intended use of the annuity.~~

6 ~~(7) Financial time horizon.~~

7 ~~(8) Existing assets, including investment and life~~
8 ~~insurance holdings.~~

9 ~~(9) Liquidity needs.~~

10 ~~(10) Liquid net worth.~~

11 ~~(11) Risk tolerance.~~

12 ~~(12) Tax status.~~

13 **Author:** Commissioner of Insurance

14 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
15 1, et seq.

16 **History:** New May 19, 2006, Effective January 1, 2007; Revised
17 July 21, 2016, Effective January 1, 2017; Revised ____, 2020,
18 Effective January 1, 2021

19 **482-1-137-.06 Duties of Insurers and of Insurance Producers.**

20 ~~(1) In recommending to a consumer the purchase of an~~
21 ~~annuity or the exchange of an annuity that results in another~~
22 ~~insurance transaction or series of insurance transactions, the~~

1 ~~insurance producer, or the insurer where no producer is~~
2 ~~involved, shall have reasonable grounds for believing that the~~
3 ~~recommendation is suitable for the consumer on the basis of~~
4 ~~the facts disclosed by the consumer as to his or her~~
5 ~~investments and other insurance products and as to his or her~~
6 ~~financial situation and needs, including the consumer's~~
7 ~~suitability information, and that there is a reasonable basis~~
8 ~~to believe all of the following:~~

9 (1) Obligations. A producer, when making a
10 recommendation of an annuity, shall do so under the
11 circumstances known at the time the recommendation is made,
12 without placing the producer's or the insurer's financial
13 interest ahead of the consumer's interest and by satisfying
14 the following obligations regarding care, disclosure, conflict
15 of interest, and documentation:

16 (a)1. Care Obligation. The producer, in making a
17 recommendation, shall exercise reasonable diligence, care, and
18 skill to accomplish all of the following:

19 (i) Know the consumer's financial situation, insurance
20 needs, and financial objectives.

1 (ii) Understand the available recommendation options
2 after making a reasonable inquiry into options available to
3 the producer.

4 (iii) Have a reasonable basis to believe the recommended
5 option effectively addresses the consumer's financial
6 situation, insurance needs, and financial objective over the
7 life of the product, as evaluated in light of the consumer
8 profile information.

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

11 2. The requirements of subparagraph 1. include making
12 reasonable efforts to obtain consumer profile information from
13 the consumer prior to the recommendation of an annuity.

14 3. The requirements of subparagraph 1. require a
15 producer to consider types of products the producer is
16 authorized and licensed to recommend or sell that address the
17 consumer's financial situation, insurance needs and financial
18 objectives. This does not require analysis or consideration
19 of any products outside the authority and license of the
20 producer or other possible alternative products or strategies
21 available in the market at the time of the recommendation.

1 Producers shall be held to standards applicable to producers
2 with similar authority and licensure.

3 4. The requirements under this paragraph (1) do not
4 create a fiduciary obligation or relationship and only create
5 a regulatory obligation as established in this chapter.

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

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

19 7. The requirements under subparagraph 1. apply to the
20 particular annuity as a whole and the underlying subaccounts
21 to which funds are allocated at the time of purchase or

1 exchange of an annuity, and riders and similar producer
2 enhancements, if any.

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

6 9. The requirements under subparagraph 1. do not mean
7 the producer has ongoing monitoring obligations under the care
8 obligation under this subparagraph (a), although such an
9 obligation may be separately owed under the terms of a
10 fiduciary, consulting, investment advising or financial
11 planning agreement between the consumer and the producer.

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

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

20 (ii) The replacing product would substantially benefit
21 the consumer in comparison to the replaced product over the
22 life of the product.

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

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

13 (b) Disclosure obligation.

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

18 (i) A description of the scope and terms of the
19 relationship with the consumer and the role of the producer in
20 the transaction.

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

1 (I) Fixed annuities.

2 (II) Fixed indexed annuities.

3 (III) Variable annuities.

4 (IV) Life insurance.

5 (V) Mutual funds.

6 (VI) Stocks and bonds.

7 (VII) Certificates of deposit.

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

12 (I) One insurer.

13 (II) From two or more insurers.

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

16 (iv) A description of the sources and types of cash
17 compensation and non-cash compensation to be received by the
18 producer, including whether the producer is to be compensated
19 for the sale of a recommended annuity by commission as part of
20 premium or other remuneration received from the insurer,

1 intermediary or other producer or by fee as a result of a
2 contract for advice or consulting services.

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

6 2. Upon request of the consumer or the consumer's
7 designated representative, the producer shall disclose both of
8 the following:

9 (i) A reasonable estimate of the amount of cash
10 compensation to be received by the producer, which may be
11 stated as a range of amounts or percentages.

12 (ii) Whether the cash compensation is a one-time or
13 multiple occurrence amount, and if a multiple occurrence
14 amount, the frequency and amount of the occurrence, which may
15 be stated as a range of amounts or percentages.

16 ~~(a)~~ 3. Prior to or at the time of the recommendation or
17 sale of an annuity, the producer shall have a reasonable basis
18 to believe ~~The~~ the consumer has been reasonably informed of
19 various features of the annuity, such as the potential
20 surrender period and surrender charge, potential tax penalty
21 if the consumer sells, exchanges, surrenders or annuitizes the
22 annuity, mortality and expense fees, investment advisory fees,

1 any annual fees, potential charges for and features of riders
2 or other options of the annuity, limitations on interest
3 returns, potential changes in non-guaranteed elements of the
4 annuity, insurance and investment components and market risk.
5 The requirements of this paragraph are intended to supplement
6 and not replace the disclosure requirements of Chapter 482-
7 129.

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

11 ~~(c) The particular annuity as a whole, the underlying~~
12 ~~subaccounts to which funds are allocated at the time of~~
13 ~~purchase or exchange of the annuity, and riders and similar~~
14 ~~product enhancements, if any, are suitable (and in the case of~~
15 ~~an exchange or replacement, the transaction as a whole is~~
16 ~~suitable) for the particular consumer based on his or her~~
17 ~~suitability information.~~

18 ~~(d) In the case of an exchange or replacement of an~~
19 ~~annuity, the exchange or replacement is suitable including~~
20 ~~taking into consideration whether:~~

21 ~~1. The consumer will incur a surrender charge, be~~
22 ~~subject to the commencement of a new surrender period, lose~~

1 ~~existing benefits (such as death, living or other contractual~~
2 ~~benefits), or be subject to increased fees, investment~~
3 ~~advisory fees or charges for riders and similar product~~
4 ~~enhancements.~~

5 ~~2. The consumer would benefit from product enhancements~~
6 ~~and improvements.~~

7 ~~3. The consumer has had another annuity exchange or~~
8 ~~replacement and, in particular, an exchange or replacement~~
9 ~~within the preceding 36 months.~~

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

14 (d) Documentation obligation. A producer shall at the
15 time of recommendation or sale, do all of the following:

16 1. Make a written record of any recommendation and the
17 basis for the recommendation subject to this chapter.

18 2. Obtain a consumer signed statement on a form
19 substantially similar to Appendix B documenting both of the
20 following:

1 (i) A customer's refusal to provide the consumer profile
2 information, if any.

3 (ii) A customer's understanding of the ramifications of
4 not providing his or her consumer profile information or
5 providing insufficient consumer profile information.

6 3. Obtain a consumer signed statement on a form
7 substantially similar to Appendix C acknowledging the annuity
8 transaction is not recommended if a customer decides to enter
9 into an annuity transaction that is not based on the
10 producer's recommendation.

11 ~~(2) Prior to the execution of a purchase, exchange, or~~
12 ~~replacement of an annuity resulting from a recommendation, an~~
13 ~~insurance producer, or an insurer where no producer is~~
14 ~~involved, shall make reasonable efforts to obtain the~~
15 ~~consumer's suitability information.~~

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

20 (e) Application. Any requirement applicable to a
21 producer under this paragraph (1) shall apply to every
22 producer who has exercised material control or influence in

1 the making of a recommendation and has received direct
2 compensation as a result of the recommendation or sale,
3 regardless of whether the producer has had any direct contact
4 with the consumer. Activities such as providing or delivering
5 marketing or educational materials, product wholesaling or
6 other back office product support, and general supervision of
7 a producer do not, in and of themselves, constitute material
8 control or influence.

9 (2) Transactions not based on a recommendation.

10 ~~(4)~~(a) Except as provided under subparagraph (b), neither
11 ~~an insurance~~ a producer, nor an insurer, shall have any no
12 obligation to a consumer under subparagraph (a) of paragraph
13 (1) related to any annuity transaction if:

14 1. No recommendation is made.

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

18 3. A consumer refuses to provide relevant suitability
19 information requested and the ~~ann~~uity transaction is not
20 recommended.

1 4. A consumer decides to enter into an annuity
2 transaction that is not based on a recommendation of the
3 ~~insurer or insurance~~ producer.

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

8 (3) Supervision system.

9 (a) Except as permitted under paragraph (2), an insurer
10 may not issue an annuity recommended to a consumer unless
11 there is a reasonable basis to believe the annuity would
12 effectively address the particular consumer's financial
13 situation, insurance needs and financial objectives based on
14 the consumer's consumer profile information.

15 ~~(5) An insurance producer or, where no insurance producer~~
16 ~~is involved, the responsible insurer representative, shall at~~
17 ~~the time of sale do all of the following:~~

18 ~~(a) Make a record of any recommendation subject to~~
19 ~~paragraph (1).~~

20 ~~(b) Obtain a customer signed statement documenting a~~
21 ~~customer's refusal to provide suitability information, if any.~~

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

5 ~~(6)(a)~~ (b) An insurer shall establish and maintain a
6 supervision system that is reasonably designed to achieve the
7 insurer's and its insurance producers' compliance with this
8 regulation chapter, including, but not limited to, all of the
9 following:

10 1. The insurer shall establish and maintain reasonable
11 procedures to inform its insurance producers of the
12 requirements of this regulation chapter and shall incorporate
13 the requirements of this regulation chapter into relevant
14 insurance producer training manuals.

15 2. The insurer shall establish and maintain standards
16 for insurance producer product training and shall establish
17 and maintain reasonable procedures to require its insurance
18 producers to comply with the requirements of Rule 482-1-137-
19 .06.1.

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

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

14 5. The insurer shall establish and maintain reasonable
15 procedures to detect recommendations that are not ~~suitable~~ in
16 compliance with subparagraphs 1., 2., 3., and 4. This may
17 include, but is not limited to, confirmation of the ~~consumer~~
18 ~~suitability~~ consumer's consumer profile information,
19 systematic customer surveys, producer and consumer interviews,
20 confirmation letters, producer statements or attestations, and
21 programs of internal monitoring. Nothing in this subparagraph
22 prevents an insurer from complying with this subparagraph by
23 applying sampling procedures, or by confirming ~~suitability~~ the

1 consumer profile information or other required information
2 under this rule after issuance or delivery of the annuity.

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

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

10 8. The insurer shall establish and maintain reasonable
11 procedures to identify and eliminate any sales contests, sales
12 quotas, bonuses, and non-cash compensation that are based on
13 the sales of specific annuities within a limited period of
14 time. The requirements of this subparagraph are not intended
15 to prohibit the receipt of health insurance, office rent,
16 office support, retirement benefits or other employee benefits
17 by employees as long as those benefits are not based upon the
18 volume of sales of a specific annuity within a limited period
19 of time.

20 6-9. The insurer shall annually provide a written report
21 to senior management, including to the senior manager
22 responsible for audit functions, which details a review, with

1 appropriate testing, reasonably designed to determine the
2 effectiveness of the supervision system, the exceptions found,
3 and corrective action taken or recommended, if any.

4 ~~(b)(c)~~1. Nothing in ~~this subparagraph~~ paragraph (3)
5 restricts an insurer from contracting for performance of a
6 function (including maintenance of procedures) required under
7 ~~subparagraph (a)~~ paragraph (3). An insurer is responsible for
8 taking appropriate corrective action and may be subject to
9 sanctions and penalties pursuant to Rule 482-1-137-.07
10 regardless of whether the insurer contracts for performance of
11 a function and regardless of the insurer's compliance with
12 subparagraph 2.

13 2. An insurer's supervision system under ~~subparagraph~~
14 ~~(a)~~ this paragraph (3) shall include supervision of
15 contractual performance under this ~~subsection~~ paragraph (3).
16 This includes, but is not limited to, the following:

17 (i) Monitoring and, as appropriate, conducting audits to
18 assure that the contracted function is properly performed.

19 (ii) Annually obtaining a certification from a senior
20 manager who has responsibility for the contracted function
21 that the manager has a reasonable basis to represent, and does
22 represent, that the function is properly performed.

1 ~~(e)~~(d) An insurer is not required to include in its
2 system of supervision ~~an insurance~~ either of the following:

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

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

8 ~~(7)~~(4) Prohibited Practices. Neither a producer nor An
9 ~~insurance producer~~ an insurer shall ~~not~~ dissuade, or attempt
10 to dissuade, a consumer from doing any of the following:

11 (a) Truthfully responding to an insurer's request for
12 confirmation of ~~suitability~~ the consumer profile information.

13 (b) Filing a complaint.

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

15 ~~(8)~~(5) Safe Harbor.

16 (a) ~~Sales~~ Recommendations and sales of annuities made in
17 compliance with ~~FINRA requirements pertaining to suitability~~
18 and ~~supervision of annuity transactions~~ comparable standards
19 shall satisfy the requirements under this ~~regulation~~ chapter.
20 This paragraph (5) applies to ~~FINRA broker-dealer~~ all
21 recommendations and sales of annuities ~~if the suitability and~~

1 ~~supervision is similar to those applied to variable annuity~~
2 sales made by financial professionals in compliance with
3 business rules, controls and procedures that satisfy a
4 comparable standard even if such standard would not otherwise
5 apply to the product or recommendation at issue. However,
6 nothing in this paragraph (5) shall limit the insurance
7 commissioner's ability to investigate and enforce ~~(including~~
8 ~~investigate)~~ the provisions of this ~~regulation~~ chapter.

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

14 ~~(b)(c)~~ For paragraph subparagraph (a) to apply, an
15 insurer shall do both of the following:

16 1. Monitor the ~~FINRA member broker-dealer~~ relevant
17 conduct of the financial professional seeking to rely on
18 subparagraph (a) or the entity responsible for supervising the
19 financial professional, such as the financial professional's
20 broker-dealer or an investment adviser registered under
21 federal or state securities laws using information collected
22 in the normal course of an insurer's business.

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

9 (d) For purposes of paragraph (5), "financial
10 professional" means a producer that is regulated and acting as
11 any of the following:

12 1. A broker-dealer registered under federal or state
13 securities laws or a registered representative of a broker-
14 dealer.

15 2. An investment adviser registered under federal or
16 state securities laws or an investment adviser representative
17 associated with the federal or state registered investment
18 adviser.

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

1 (e) For purposes of paragraph (5), "comparable standards"
2 means:

3 1. With respect to broker-dealers and registered
4 representatives of broker-dealers, applicable SEC and FINRA
5 rules pertaining to best interest obligations and supervision
6 of annuity recommendations and sales, including, but not
7 limited to, Regulation Best Interest and any amendments or
8 successor regulations thereto.

9 2. With respect to investment advisers registered under
10 federal or state securities laws or investment adviser
11 representatives, the fiduciary duties and all other
12 requirements imposed on such investment advisers or investment
13 adviser representatives by contract or under the Investment
14 Advisers Act of 1940 or applicable state securities law,
15 including but not limited to, the Form ADV and
16 interpretations.

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

21 **Author:** Commissioner of Insurance

22 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
23 1, et seq.

1 **History:** New May 19, 2006, Effective January 1, 2007; Revised
2 July 21, 2016, Effective January 1, 2017; Revised ____, 2020,
3 Effective January 1, 2021

4 **482-1-137-.06.1 Insurance Producer Training.**

5 (1) ~~An insurance~~ A producer shall not solicit the sale of
6 an annuity product unless the ~~insurance~~ producer has adequate
7 knowledge of the product to recommend the annuity and the
8 ~~insurance~~ producer is in compliance with the insurer's
9 standards for product training. ~~An insurance~~ A producer may
10 rely on insurer-provided product-specific training standards
11 and materials to comply with this paragraph.

12 (2) (a) 1. ~~An insurance~~ A producer who engages in the sale
13 of annuity products shall complete a one-time four (4) credit
14 training course approved by the department of insurance and
15 provided by the department of insurance-approved education
16 provider.

17 2. ~~Insurance producers~~ Producers who hold a life
18 insurance line of authority on the effective date of this
19 regulation and who desire to sell annuities shall complete the
20 requirements of this subsection within six (6) months after
21 the effective date of this regulation. Individuals who obtain
22 a life insurance line of authority on or after the effective

1 date of this regulation may not engage in the sale of
2 annuities until the annuity training course required under
3 this subsection has been completed.

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

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

9 1. The types of annuities and various classifications of
10 annuities.

11 2. Identification of the parties to an annuity.

12 3. How product specific annuity contract features affect
13 consumers.

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

16 5. The primary uses of annuities.

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

19 (d) Providers of courses intended to comply with this
20 subsection shall cover all topics listed in the prescribed
21 outline and shall not present any marketing information or

1 provide training on sales techniques or provide specific
2 information about a particular insurer's products. Additional
3 topics may be offered in conjunction with and in addition to
4 the required outline.

5 (e) A provider of an annuity training course intended to
6 comply with this paragraph shall register as a CE provider in
7 this State and comply with the rules and guidelines applicable
8 to ~~insurance~~ producer continuing education courses as set
9 forth in Alabama Insurance Regulation 110, Chapter 482-1-110.

10 (f) A producer who has completed an annuity training
11 course approved by the department of insurance prior to
12 January 1, 2021, shall, within six (6) months after January 1,
13 2021, complete either of the following:

14 1. A new four (4) credit training course approved by the
15 Department of Insurance after January 1, 2021.

16 2. An additional one-time one (1) credit training course
17 approved by the Department of Insurance and provided by the
18 approved education provider on appropriate sales practices,
19 replacement and disclosure requirements under this amended
20 chapter.

1 ~~(f)~~(g) Annuity training courses may be conducted and
2 completed by classroom or self-study methods in accordance
3 with Alabama Insurance Regulation 110, Chapter 482-1-110.

4 ~~(g)~~(h) Providers of annuity training shall comply with
5 the reporting requirements and shall issue certificates of
6 completion in accordance with Alabama Insurance Regulation
7 110, Chapter 482-1-110.

8 ~~(h)~~(i) The satisfaction of the training requirements of
9 another State that are substantially similar to the provisions
10 of this paragraph shall be deemed to satisfy the training
11 requirements of this paragraph in this State.

12 ~~(i)~~(j) An insurer shall verify that an insurance producer
13 has completed the annuity training course required under this
14 paragraph before allowing the producer to sell an annuity
15 product for that insurer. An insurer may satisfy its
16 responsibility under this paragraph by obtaining certificates
17 of completion of the training course or obtaining reports
18 provided by commissioner-sponsored database systems or vendors
19 or from a reasonably reliable commercial database vendor that
20 has a reporting arrangement with approved insurance education
21 providers.

1 **Author:** Commissioner of Insurance
2 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
3 1, et seq.
4 **History:** New July 21, 2016, Effective January 1, 2017;
5 Revised ____, 2020, Effective January 1, 2021

6 **482-1-137-.07 Compliance Mitigation; Penalties; Enforcement.**

7 (1) An insurer is responsible for compliance with this
8 ~~regulation~~ chapter. If a violation occurs, either because of
9 the action or inaction of the insurer or its ~~insurance~~
10 producer, the commissioner may order any of the following:

11 (a) An insurer to take reasonably appropriate corrective
12 action for any consumer harmed by a failure to comply with
13 this chapter by the insurer's insurer, an entity contracted to
14 perform the insurer's supervisory duties, or by its insurance
15 producer's the producer, violation of this chapter.

16 (b) A general agency, independent agency or the ~~insurance~~
17 producer to take reasonably appropriate corrective action for
18 any consumer harmed by the ~~insurance~~ producer's violation of
19 this chapter.

20 (c) Appropriate penalties and sanctions.

21 (2) Any applicable penalty under Section 27-12-1 et seq.
22 Code of Alabama 1975 for a violation of Rule 482-1-137-
23 .06(1), (2) or (3)(b) ~~of this Chapter~~ may be reduced or

1 eliminated if corrective action for the consumer was taken,
2 promptly after a violation was discovered or the violation was
3 not part of a pattern or practice.

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

6 **Author:** Commissioner of Insurance

7 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
8 1, et seq.

9 **History:** New May 19, 2006, Effective January 1, 2007; Revised
10 July 21, 2016, Effective January 1, 2017; Revised ____, 2020,
11 Effective January 1, 2021

12 **482-1-137-.08 Recordkeeping.**

13 (1) Insurers, general agents, independent agencies and
14 ~~insurance~~ producers shall maintain or be able to make
15 available to the commissioner records of the information
16 collected from the consumer, disclosures made to the consumer,
17 including summaries of oral disclosures, and other information
18 used in making the recommendations that were the basis for
19 insurance transactions for three (3) years after the insurance
20 transaction is completed by the insurer. An insurer is
21 permitted, but shall not be required, to maintain
22 documentation on behalf of ~~an insurance~~ a producer.

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

5 **Author:** Commissioner of Insurance
6 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
7 1, et seq.
8 **History:** New May 19, 2006, Effective January 1, 2007; Revised
9 ____, 2020, Effective January 1, 2021

10 **482-1-137-.09 Separability.** If any portion of this chapter or
11 its applicability to any person or circumstance is held
12 invalid by a court, the remainder of the chapter or the
13 applicability of the provision to other persons or
14 circumstances shall not be affected.

15 **Author:** Commissioner of Insurance
16 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-
17 1, et seq.
18 **History:** New May 19, 2006, Effective January 1, 2007

19 **482-1-137-.10 Effective Date.** This chapter shall be effective
20 January 1, ~~2017~~ 2021, upon its approval by the Commissioner of
21 Insurance and upon its having been on file as a public
22 document in the office of the Secretary of State for ten days.

23 **Author:** Commissioner of Insurance
24 **Statutory Authority:** Code of Alabama 1975, § 27-2-17 & 27-12-

- 1 1, et seq.
- 2 **History:** New May 19, 2006, Effective January 1, 2007; Revised
- 3 July 21, 2016, Effective January 1, 2017; Revised ___, 2020,
- 4 Effective January 1, 2021

5

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:

<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 "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 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

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 Alabama Insurance Code if you sign this form or provide inaccurate information.

Statement of Purchaser:

☐ I REFUSE to provide this information at this time.

☐ I have chosen to provide LIMITED information at this time.

Customer Signature

Date

APPENDIX C

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

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

Why are you being given this form? You are buying a financial product - an annuity.

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

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

Statement of Purchaser:

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

Customer Signature

Date

Agent/Producer Signature

Date