

Chapter 117. Regulation Number 89—Suitability in Annuity Transactions

§11701. Purpose

A. The purpose of this regulation is 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 time of the transaction are appropriately addressed.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11703. Scope

A. This regulation shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11705. Authority

A. This regulation is promulgated under the authority of R.S. 22:3 and the auspices of Part XXVI:R.S. 22:1211 et seq., referred to as "Unfair Trade Practices."

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11707. Exemptions

A. Unless otherwise specifically included, this regulation shall not apply to recommendations involving:

1. direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

2. contracts used to fund:

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

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

c. a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

d. a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

f. formal prepaid funeral contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11709. Definitions

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

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

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

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11711. Duties of Insurers and of Insurance Producers

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

B. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

1. the consumer's financial status;

2. the consumer's tax status;

3. the consumer's investment objectives; and

4. such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

C.1. Except as provided under Paragraph 2 of this Subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Subsection A related to any recommendation if a consumer:

- a. refuses to provide relevant information requested by the insurer or insurance producer;
- b. decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
- c. fails to provide complete or accurate information.

2. An insurer or insurance producer's recommendation subject to Paragraph 1 shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

D.1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs 3 to 5 of this Subsection, or shall establish and maintain such a system, including, but not limited to:

- a. maintaining written procedures; and
- b. conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

2. A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:

- a. maintaining written procedures; and
- b. conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

3. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph 1 with respect to insurance producers under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph 3 of this Subsection is performing the functions required under Paragraph 1 of this Subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

- a. the insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

- b. the insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph 3 of this Subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

5. An insurer that contracts with a third party pursuant to Paragraph 3 of this Subsection and that complies with the requirements to supervise in Paragraph 4 of this Subsection shall have fulfilled its responsibilities under Paragraph 1 of this Subsection.

6. An insurer, general agent or independent agency is not required by Paragraph 1 or 2 of this Subsection to:

- a. review, or provide for review of, all insurance producer solicited transactions; or
- b. include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

7. A general agent or independent agency contracting with an insurer pursuant to Paragraph 3 of this Subsection shall promptly, when requested by the insurer pursuant to Paragraph 4 of this Subsection, give a certification as described in Paragraph 4 of this Subsection or give a clear statement that it is unable to meet the certification criteria.

8. No person may provide a certification under Paragraph 4.a of this Subsection unless:

- a. the person is a senior manager with responsibility for the delegated functions; and
- b. the person has a reasonable basis for making the certification.

E. Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this Section for the recommendation of variable annuities. However, nothing in this Subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11713. Mitigation of Responsibility

A. The commissioner may order:

1. an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

2. an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and

3. a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation.

B. Any applicable penalty under R.S. 22:1217 for a violation of Section 11711.A.B or C.2 of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2269 (December 2006).

§11715. Recordkeeping

A. 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 and other information used in making the recommendations that were the basis for insurance transactions for 3 years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2270 (December 2006).

§11717. Severability

A. If any provision or item of this regulation, or the application thereof, is held to be invalid, such invalidity shall not affect other provisions, items, or applications of the regulation, which can be given effect without the invalid provisions, item, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2270 (December 2006).

Chapter 119. Regulation Number 91—The Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities

§11901. Authority

A. This regulation is promulgated by the Commissioner of Insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22, §22:1 et seq., particularly the Standard Valuation Law, see Title 22, §163.B.(1)(a) and Subsections 10909.A and B of Regulation 85.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:464 (March 2007).

§11903. Purpose

A. The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with Title 22, §163.B.(1)(a) and Subsections 10909.A and B of Regulation 85.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, 22:163, 22:168 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:464 (March 2007).

§11905. Definitions

A. For purposes of this regulation:

2001 CSO Mortality Table—that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC* (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below in Subsection B. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following.

2001 CSO Mortality Table (F)—that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

2001 CSO Mortality Table (M)—that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

Composite Mortality Tables—mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

Smoker and Nonsmoker Mortality Tables—mortality tables with separate rates of mortality for smokers and nonsmokers.

B. *2001 CSO Preferred Class Structure Mortality Table*—mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and