

State of Idaho
DEPARTMENT OF INSURANCE

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BULLETIN NO. 21-05

DATE: September 10, 2021
TO: Insurers and producers writing annuities in Idaho
FROM: Dean L. Cameron, Director
SUBJECT: Annuity Consumer Protections Act – Suitability and Disclosures under Idaho Code § 41-1940 through 41-1943

This Bulletin supersedes and replaces the following three Bulletins, which provided guidance to insurers and producers about annuity sales and related annuity disclosures and filings under the Idaho Insurance Code, Title 41:

- Bulletin No. 10-06. Senate Bill 1327: Annuity Sales to Consumers – Disclosures.
- Bulletin No. 13-06. Idaho Code § 41-1941: Annuity Sales to Consumers – Disclosures.
- Bulletin No. 20-11. Annuity disclosures and filings under Idaho Code §§ 41-1941 - 41-1943.

[House Bill No. 79](#), which took effect on July 1, 2021, updates the suitability and disclosure requirements for annuity sales to Idaho consumers. These changes are codified in the Annuity Consumer Protections Act in Idaho Code § 41-1940 through 41-1943, and they affect anyone involved in selling annuity contracts where the contract owner is an Idaho resident. This Bulletin applies to all group and individual annuity contracts and certificates that are subject to the referenced provisions of Idaho Code, including the advertisements and disclosures of annuities filed with the Interstate Insurance Product Regulation Commission. Persons involved in the sale of annuities should carefully review these standards as codified. The purpose of this Bulletin is to provide insurers and producers with the necessary guidance and forms to comply with the Annuity Consumer Protections Act.

I. Annuity Suitability Forms

Idaho Code § 41-1940A(4) establishes a disclosure obligation under the annuity suitability duties. *Before the recommendation or sale of an annuity*, the producer must make certain disclosures to the consumer on a form prescribed by the Director. That form is NAIC Appendix A to the NAIC Model Act 275, “Insurance Agent (Producer) Disclosure for Annuities.” The form is attached to this Bulletin and published separately on the Department website. The form supplements, and does not replace, the disclosure requirement under Idaho Code § 41-1941, below.

Idaho Code § 41-1940A(6)(b) requires a producer, *at the time of recommendation or sale*, to obtain a consumer-signed statement, on a form prescribed by the Director, if the consumer refuses to provide consumer profile information. That form is NAIC Appendix B to the NAIC Model Act 275, “Consumer Refusal to Provide Information.” This form is attached to this Bulletin and published separately on the Department website.

Idaho Code § 41-1940A(6)(c) also requires a producer, *at the time of recommendation or sale*, to obtain a consumer-signed statement, on a form prescribed by the Director, acknowledging an annuity transaction is not recommended if a customer decides to enter an annuity transaction that is not based on the producer's recommendation. That form is NAIC Appendix C to the NAIC Model Act 275, "Consumer Decision to Purchase an Annuity NOT Based on a Recommendation." This form is attached to this Bulletin and published separately on the Department website.

II. Disclosure Document and Buyer's Guide

Idaho Code § 41-1941 establishes requirements for annuity disclosures. A key part of the statute requires insurers and producers to give an annuity applicant both a disclosure document and a buyer's guide in forms prescribed by the Director. As of the publication of this Bulletin, the Idaho Annuity Disclosure attached to superseded Bulletin No. 20-11 is no longer required.

An insurer must file their annuity-contract disclosures with the Department before using them. Those disclosures must show at least the following information is being *clearly* presented (information in addition to what is in statute is italicized):

- i. The generic name of the contract, the insurer product name if different than the generic name, the form number, and that the contract is an annuity.
- ii. The insurer's legal name, physical address, *website address and telephone number*.
- iii. A description of the annuity contract and its benefits, emphasizing its long-term nature, including the following, where appropriate:
 - a. The guaranteed, non-guaranteed and determinable elements of the contract, and limitations, if any, *and emphasizing for fixed indexed annuities the elements used to determine the index-based interest, such as the participation rates, caps and spread*, and an explanation of how they operate;
 - b. An explanation of the initial crediting rate, *and for fixed indexed annuities, an explanation of how the index-based interest is determined*, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
 - c. The periodic income options, both on a guaranteed and nonguaranteed basis;
 - d. Any value reductions caused by withdrawals from or surrender of the contract;
 - e. How values in the contract can be accessed;
 - f. The death benefit, if available, and how it will be calculated;
 - g. A summary of the contract's federal tax status, and any penalties applicable on withdrawal of values from the contract; and,
 - h. The impact of any rider to the contract, *including, but not limited to, a guaranteed living benefit or long-term care rider*.
- iv. The specific dollar amount or percentage of all charges and fees shall be listed with an explanation of how such charges and fees apply.
- v. Information as to the current guaranteed rate *and indexed crediting rate formula, if applicable*, for new contracts that contains a clear notice that the rate is subject to change.
- vi. Where a disclosure document provides projections for non-guaranteed elements of a contract, there shall be equal prominence given to guaranteed elements.
- vii. The disclosure document must clearly define terms and use concise language that facilitates the understanding of a typical person within the segment of the public to which the disclosure document is directed.

The buyer's guide requirement, which is referenced in subsections (2), (3), and (4) of the statute, may be satisfied by providing customers the most recently approved version of the National Association of Insurance Commissioner's Annuity Buyer's Guide. If an insurer makes any modification to the Buyer's guide, the insurer must file the modification with the Department prior to use.

III. Fixed Indexed Annuity Filing Requirements

Idaho Code § 41-1942 requires insurers of fixed indexed annuity contracts (also called "interest-indexed" in statute) to submit any advertisement, regardless of the medium, for review and approval by the Director, before such advertisement is used to induce the purchase of an annuity contract.

An insurer that uses or publishes material marked with "Producer Only" (or substantially similar language), that will not be shown or relied upon by consumers in the sale of annuities, does not have to submit the material unless requested. Additionally, any material that makes no representation of specific products, expected/potential returns or ranges of returns, features, fees, or other terms of an annuity product or contract, does not need to be submitted unless requested.

However, any advertisements, including "Lead Cards" or similar documents or publications containing ranges or other product information that consumers may see or have access to, or that may be given to the consumer, are considered advertisement material and must be submitted for review and approval to the Department. This includes, but is not limited to, illustrations and other such documents seen by the consumer as part of the sales process. If "Producer Only" documents are shown to consumers, an insurer may be subject to enforcement action due to noncompliance.

The same advertisement filing requirement applies to indexed annuity products and contracts filed with the Interstate Insurance Product Regulation Commission, as provided under chapter 57, title 41, Idaho Code, that are intended to be sold to Idaho residents.

IV. Standards for Policy Provisions for Annuities

Idaho Code § 41-1943 prohibits surrender charges past ten years from the time of deposit and establishes a maximum surrender charge of 10% in the first year with a 1% reduction in the applicable maximum each subsequent year, as shown in the table below. Any annuity contracts with surrender charges above these statutory thresholds may not be sold in Idaho after July 1, 2020.

Years Since Deposit	1	2	3	4	5	6	7	8	9	10	11+
Max Surrender Charge	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%

This Bulletin is not new law but is an agency interpretation of existing law, except as authorized by law or as incorporated into a contract.

Requests for additional information or other inquiries regarding this Bulletin can be directed to Deputy Director Wes Trexler at 208-334-4214 or weston.trexler@doi.idaho.gov.

APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My”)

First Name: _____ Last Name: _____

Business\Agency Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

National Producer Number in [state]: _____

CUSTOMER INFORMATION (“You”, “Your”)

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- ☐ Fixed or Fixed Indexed Annuities
- ☐ Variable Annuities
- ☐ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

- ☐ Mutual Funds
- ☐ Stocks/Bonds
- ☐ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

☐ Annuities from Only One (1) Insurer	☐ Annuities from Two or More Insurers
☐ Annuities from Two or More Insurers although I primarily sell annuities from: _____	

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by 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):_____.

<i>If You have questions about the above compensation I will be paid for this transaction, please ask me.</i>
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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 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 C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

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

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

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

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

Statement of Purchaser:

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

Customer Signature

Date

Agent/Producer Signature

Date