

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

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In the Matter of **Bankers Life and**) **STIPULATION** and
Casualty Company) **FINAL ORDER**
) Case No. INS 08-10-004

STIPULATION

The Director of the Oregon Department of Consumer and Business Services (Director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Bankers Life and Casualty Company (Bankers Life).

Bankers Life desires to conclude this proceeding without a hearing by entering into this stipulation pursuant to ORS 183.417(3).

Bankers Life waives all rights relative to an administrative hearing and judicial review thereof.

Bankers Life neither admits nor denies the Director’s allegations that Bankers violated Oregon law, but being desirous of terminating these proceedings without the necessity of a formal hearing or litigation, consents to the issuance of a final order incorporating this Stipulation.

Facts and Conclusions

Licensing Information

Bankers Life has been licensed in Oregon as a foreign insurer since 12/16/52. Bankers Life’s last recorded principal business address is located in Carmel, Indiana.

Unsuitable Life Insurance Transactions

The Director alleges that Bankers Life is subject to enforcement action pursuant to OAR 836-080-0090 because of the following circumstances. OAR 836-080-0090 prohibits a person from recommending that another person purchase or replace a life insurance policy or annuity, or any rider, endorsement or amendment to the policy or annuity, without *reasonable grounds* to believe that the transaction is not

1 unsuitable for the other person *based upon a reasonable inquiry* concerning the
2 other person's insurance objectives, financial situation and needs, age and other
3 relevant information known by the person. The Director maintains that from
4 1/28/05 to 2/27/08, Bankers Life issued at least 30 annuities to persons residing in
5 Oregon without either making a reasonable inquiry into the relevant circumstances
6 of each person or having reasonable grounds to believe that the annuities were not
7 unsuitable for each person. The Director further maintains that Bankers Life failed
8 to adequately inquire or have grounds to issue the annuities because Bankers Life
9 issued the annuities based on information which (1) in some instances did not
10 disclose the person's available financial assets, (2) in most instances represented
11 that the person was depositing most, all, or even more than all, of the person's
12 available financial assets into the annuity, and (3) in all instances did not disclose
13 the person's expenses and debt. Thus, although Bankers Life had reason to believe
14 that a person could buy an annuity, the Director maintains that Bankers Life did
15 not have any reason to believe that the person could afford the annuity and still
16 meet their other anticipated and unanticipated expenses.

17 **Action**

18 Civil Penalty

19 Pursuant to ORS 731.988, Bankers Life is assessed a civil penalty of \$150,000.
20 The payment shall be made in the form of a check payable to the "Department of
21 Consumer and Business Services" for the full amount due. The payment shall be
22 mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405 and
23 *received* by the Insurance Division within fifteen (15) days of the date of the final
24 order.

25 The Director shall not take additional enforcement action against Bankers Life
26 for a violation of OAR 836-080-0090 that occurred before the date of the final order.

27 Remediation

28 1. Within sixty (60) days of the date of the final order, Bankers Life shall
29 provide on a compact disc in an Excel™ format, for all annuities issued in Oregon

- 1 from 1/1/05 to the date of the final order, the following information if within the
2 company's possession or control to the Director:
- 3 a. Annuity number.
 - 4 b. Application date.
 - 5 c. Annuity effective date.
 - 6 d. Applicant's name.
 - 7 e. Age of the applicant(s) at time of application.
 - 8 f. Type of annuity – if a deferred annuity, then identify the length of time
9 before the annuity is annuitized.
 - 10 g. Face amount of the annuity.
 - 11 h. Did the annuity replace another annuity or policy? If so then identify the
12 insurer and policy or annuity that was replaced.
 - 13 i. Annuity still in force – if not, then why not?
 - 14 j. Source of funding.
 - 15 k. Soliciting producer(s).
 - 16 l. Soliciting producer's direct manager.
 - 17 2. Bankers Life and the Director shall agree on a remediation plan which will
18 include details as to how contact is made with annuity owners, and the standards to
19 be used in determining the suitability of each annuity subject to the remediation
20 plan and the method for remediation.
 - 21 3. Bankers Life shall contract with a third party, referred to herein as the
22 Remediator, to carry out a remediation plan subject to all of the following:
 - 23 a. Within sixty (60) days of the date of the final order, Bankers Life shall
24 submit a remediation plan with respect to Bankers Life annuities issued to Oregon
25 residents from 1/1/05 to the date of the final order, except annuity owners who were
26 previously contacted by the Insurance Division of the Oregon Department of
27 Consumer and Business Services as part of an investigation into Bankers Life's
28 annuity sales practices in Oregon.
 - 29 b. The remediation plan shall be subject to the Director's approval.

1 4. On the first day of each month, the Remediator shall submit to Bankers Life
2 and the Director a monthly report of the progress of the remediation of the
3 annuities. The report shall be in a format agreeable to both Bankers Life and the
4 Director. The Remediator shall submit the report until all of the annuities subject
5 to the remediation plan have been reviewed.

6 5. If an annuity sale is found to be not suitable by the Remediator in accordance
7 with the remediation plan, Bankers Life shall offer the annuity owner or the
8 annuity owner's lawful representative, subject to the annuity owner or
9 representative signing a release prepared by Bankers Life, the following options:

10 a. If the annuity owner elects to keep the annuity, Bankers Life shall issue an
11 amendment to the policy waiving any remaining surrender period and charges.

12 b. If the annuity owner elects to cancel the annuity, Bankers Life shall waive all
13 surrender charges and pay all interest owed under the annuity; and pay all
14 verifiable charges incurred by the annuity owner as a result of purchasing the
15 cancelled annuity, as specified in the remediation plan, such as taxes, surrender
16 charges, and fees and commissions for security sales. Bankers Life shall not pay
17 any costs incurred by the annuity owner as a result of canceling the annuity.

18 6. Bankers Life shall do an analysis of the producer(s), supervisor(s),
19 manager(s) and branch manager(s) involved in the sale of the annuity(ies) that are
20 found to be not suitable as a result of the remediation plan, and determine which of
21 the producers, supervisors, managers and branch managers that need additional
22 training and/or disciplinary action. On the first day of each month, Bankers Life
23 shall submit to the Director a report of the results of the analysis until all
24 producers, supervisors, managers and branch managers have been reviewed and
25 appropriate training has been provided and disciplinary action has been taken.

26 Corrective Action

27 7. The following items must be implemented within six (6) months of the date of
28 the final order:

29 a. Bankers Life shall create a product suitability form that is to be used in any
30 solicitation of an annuity product in Oregon. The applicant, producer and

1 producer's Branch Sales Manager shall sign the product suitability form before the
2 application is submitted to Bankers Life. In the event the Branch Sales Manager is
3 unavailable the Unit Sales Manager shall sign the product suitability form. If the
4 applicant refuses to sign the product suitability form or provide the information
5 requested on the product suitability form, Bankers Life shall provide a notice to the
6 applicant that explains that the product may be unsuitable for them. The product
7 suitability form shall contain the following elements: applicant's insurance
8 objectives, financial situation and needs, age and any other relevant information
9 determined by Bankers Life that is relevant in their suitability analysis. The
10 product suitability form and notice form shall be subject to the approval of the
11 Director.

12 b. On a quarterly basis, Bankers Life shall provide to the Director a list of all
13 applications for annuity products that were denied at the branch or home office on
14 the grounds that the sale was not suitable. The list shall contain the following:

- 15 (1) Date of application.
- 16 (2) Applicant's name.
- 17 (3) Producer's name.
- 18 (4) Producer's manager's name.
- 19 (5) Type of annuity applied for.
- 20 (6) Face amount of the annuity.
- 21 (7) When available, the reason for the denial.

22 c. Bankers Life shall develop and implement a disciplinary program for
23 producers appointed by Bankers Life that Bankers Life has reasonable grounds to
24 believe violated Oregon's suitability rule in OAR 836-080-0090. This will include
25 reporting of any such investigation or review of a producer's activity to the Director
26 within thirty (30) days of beginning of investigation.

27 8. Within thirty (30) days of the date of the final order, Bankers Life shall
28 submit to the Director a copy of its register for Oregon consumer complaints for
29 annuity related complaints received between 1/1/05 and the date of the final order.

1 9. Bankers Life shall not issue any annuity in Oregon unless it has reasonable
2 grounds for believing that the sale of the annuity complies with OAR 836-080-0090.

3 a. Before determining whether an annuity is not unsuitable for a particular
4 applicant, Bankers Life shall require producers to obtain from the applicant all of
5 the information requested in the product suitability form. If an application is
6 approved at a branch office, then the application and product suitability form shall
7 be sent to Bankers Life's home office and shall be scanned and maintained at
8 Bankers Life's home office. If an application is rejected at the branch office, then
9 the application and product suitability form shall be retained at the branch office.

10 b. In the event a producer submits an application for an annuity that lacks
11 appropriate supporting documentation or authorization, Bankers Life shall advise
12 the producer to supply the missing information. If after sixty (60) days the missing
13 information has not been provided, Bankers Life shall reject the application.

14 10. Bankers Life shall put all annuity applications received from an applicant
15 through Bankers Life's standards and procedures to monitor and review annuity
16 sales. Applications identified as being outside of specified thresholds in
17 paragraph 13 and that the Branch Sales Manager nonetheless recommends for
18 consideration by Bankers Life shall be assessed for suitability through a
19 heightened, elevated review process (Elevated Review) in which the application is
20 individually reviewed by designated Elevated Review staff. If an annuity
21 application is submitted to Elevated Review, Bankers Life shall review the
22 applicant's information as contained in the product suitability form to determine
23 whether the sale complies with OAR 836-080-0090. The information reviewed by
24 Bankers Life in the Elevated Review process shall be kept by Bankers Life and
25 subject to review by the Director. If during the Elevated Review process a producer
26 fails to provide Bankers Life with the financial information requested, the
27 application shall be rejected.

28 11. Within six (6) months of the date of the final order, Bankers Life shall
29 implement an Elevated Review process to provide an additional layer of review of
30 annuity applications that fail to pass one or more of the threshold tests of the

1 suitability review process. Bankers Life shall not issue an annuity that is subject to
2 Elevated Review unless it determines and documents with specific and objective
3 evidence that the sale complies with OAR 836-080-0090. Bankers Life shall also
4 document its rationale for accepting, rejecting or modifying all applications
5 submitted to Elevated Review. The documentation is to be kept by Bankers Life
6 and subject to review by the Director.

7 12. Bankers Life shall enhance its existing suitability review process by
8 including the suitability threshold tests set forth in paragraph 13. If an application
9 triggers one or more of the threshold tests of the suitability review process and the
10 Branch Sales Manager nonetheless recommends consideration for the application
11 by Bankers Life, then the application shall be submitted to Elevated Review

12 13. Subject to paragraph 12, Bankers Life shall submit to its Elevated Review
13 process all applications from all applicants if any of the following conditions exist
14 based on information received by Bankers Life:

15 a. Regardless of age, an applicant's annual income is \$20,000 or less, or is less
16 than 120% of annual expenses;

17 b. Regardless of age, and with the exception of rollovers, if after purchasing the
18 annuity the premium exceeds 50% of the applicant's Household Liquid Assets;

19 c. Regardless of age, the value of all of the annuities owned by the applicant,
20 including the annuity being purchased, is equal to or greater than 75% of the
21 applicant's Household Liquid Assets;

22 d. The applicant is age 80 or older and the applicant is purchasing a
23 replacement annuity and a surrender charge in excess of 3% is incurred as a result
24 of the replacement; or

25 e. Regardless of age, the applicant currently resides in a nursing home or
26 assisted living facility.

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28 "Income" shall include, but is not limited to the following sources of an applicant
29 and, if a member of the same household then also the sources of the applicant's
30 spouse/partner: salary and wages; Social Security payments; payments from an

1 individual retirement account or other similar retirement plans, including a
2 pension; payments from annuities that have been annuitized; interest payments;
3 dividends; rental income; and profits from the sale of a business or asset. "Income"
4 shall not include income currently earned on funds an applicant intends to invest in
5 an annuity.

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7 "Household Liquid Assets" shall mean the value of assets owned by an applicant
8 and, if a member of the same household then also the value of assets owned by the
9 applicant's spouse/partner. "Household Liquid Assets" shall include, but are not
10 limited to, any amount in a checking, savings, certificates of deposit, or money
11 market account; the value of stocks, bonds, mutual funds, and other investments
12 less applicable fees, penalties, or deferred sales charges. "Household Liquid Assets"
13 shall not include any real property, amount that an applicant may withdraw from
14 the annuity that is being applied for by the applicant, and personal property of an
15 applicant or if a member of the applicant's household then also personal property of
16 the applicant's spouse/partner, including but not limited to, jewelry, furnishings or
17 vehicles.

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19 14. Bankers Life shall conduct, or retain LIMRA to conduct, for a period of two
20 (2) years a semi-annual random survey of Bankers Life's policyholders in Oregon
21 whose annuities were issued within the prior six (6) months to ascertain the extent
22 to which the policyholder understands the product purchased, the level of
23 satisfaction with the sale, if the sale involved the replacement of an existing policy,
24 and the extent to which the policyholder was comfortable with their interaction
25 with the sales staff of Bankers Life. The survey shall include a percentage of the
26 annuities issued by Bankers Life for the preceding six (6) month period according to
27 the following schedule:

28 Period 1: 50%

29 Period 2: 35%

30 Period 3: 20%

1 Period 4: 10%

2 A report of the survey shall be prepared. Within thirty (30) days of completing or
3 receiving each report, Bankers Life shall send the report to the Director.

4 15. Bankers Life currently requires a third party to sign an application for an
5 annuity when the applicant for the annuity is eighty-five (85) years of age or older.
6 Bankers Life shall lower the age requirement to eighty (80) years of age or older,
7 and ask the third party how long they have known the applicant and what the third
8 party's relationship is to the applicant.

9 16. Bankers Life shall not have a "free look" period for its annuity products of
10 less than 30 calendar days.

11 17. Bankers Life shall provide training to producers on replacing annuity
12 contracts, the use of the product suitability form used by Bankers Life for the
13 collection of an applicant's information, and OAR 836-080-0090.

14 18. Bankers Life shall fully implement paragraph 9 within six (6) months of the
15 date of this final order. During the period between the date of the final order and
16 the date Bankers Life fully implements paragraph 9, Bankers Life shall provide
17 producers the training listed in paragraph 17, and implement the procedures set
18 forth in paragraphs 9 through 13 for applications that are submitted to Elevated
19 Review.

20 19. For a period of two (2) years from the date of the final order, Bankers Life
21 shall provide aggregated statistical information to the Director in regard to the
22 results of Bankers Life's standards and procedures as promulgated by this
23 Corrective Action Plan, in a format to be approved by the Director.

24 20. Bankers Life shall submit to the Director prior to use, all future modified
25 telephone scripts, postcards, or other annuity marketing or advertising materials to
26 be used by any producer or branch office. Bankers Life shall use reasonable efforts
27 to ensure that all of Bankers Life's appointed producers and branch and unit
28 managers in Oregon use only those annuity materials on file with the Director and
29 approved by Bankers Life.

1 21. Within thirty (30) days of the date of the final order, Bankers Life shall
2 review its appraisal/performance review process for branch and unit managers.
3 Bankers Life shall use reasonable efforts to ensure that the performance of branch
4 and unit managers is based, in part, upon adherence to all applicable Oregon
5 insurance law. Upon obtaining knowledge that a Bankers Life's appointed producer
6 or manager has violated Oregon insurance law in any material respect regarding
7 suitability, replacement or disclosure requirements, Bankers Life shall take
8 immediate disciplinary action against the producer or manager and document the
9 action taken, and shall notify the Director of the disciplinary action taken.

10 22. Within fifteen (15) days of the final order, Bankers Life shall notify in writing
11 its appointed producers and branch and unit managers in Oregon that they are
12 prohibited from:

- 13 a. Suggesting a reverse mortgage as a means to fund an annuity;
- 14 b. Suggesting a reverse mortgage as a means to eliminate the need for Medicare
15 benefits and to fund a Medicare supplement policy;
- 16 c. Referring any clients to any financial institution or other entity authorized to
17 conduct reverse mortgage transactions for the purpose of obtaining a reverse
18 mortgage; and
- 19 d. Assisting a client in any way in the obtaining of a reverse mortgage.

20 23. Within ninety (90) days of the date of the final order, Bankers Life shall
21 perform a competency and ethics review of all branch managers in Oregon, taking
22 into account the number of complaints the Director has received regarding the
23 producers in each branch office and the oversight exercised by each branch
24 manager. Bankers Life shall establish a performance review process for those
25 branch managers in Oregon to take place at least once a year, evaluating
26 performance and among other things; ethical conduct, competency and
27 trustworthiness. This annual performance review of branch managers shall be
28 made available to the Director each year for a period of two (2) years beginning
29 1/1/09.

1 24. Bankers Life shall contract with a third party, satisfactory to the Director,
2 within sixty (60) days of the date of the final order to conduct interviews of Bankers
3 Life appointed producers. The third party shall ascertain whether Bankers Life
4 producers possess the knowledge and skills necessary to sell the types of products
5 approved for sale by Bankers Life in Oregon. The interviews shall be completed
6 within six (6) months from the date of the final order. The third party shall prepare
7 a report of the interviews and send the report to Bankers Life. Bankers Life shall
8 send the report to the Director within fifteen (15) days after receiving the report. If
9 the third party finds that a producer does not possess the necessary knowledge and
10 skills to sell Bankers Life's products in Oregon, the third party shall recommend
11 whether additional training for the producer would suffice to address the concern.

12 25. Within forty-five (45) days of receiving the report referred to in paragraph 24,
13 Bankers Life shall file a plan of corrective action with the Director setting forth the
14 steps Bankers Life will take to implement each recommendation or, if Bankers Life
15 disagrees with a recommendation, setting forth an alternative method for
16 addressing a deficiency noted in the report. Any plan of corrective action shall
17 include specific deadlines for implementation of action steps.

18 26. Once every other six (6) months for a period of two (2) years from the date of
19 the final order, Bankers Life shall review the training systems and procedures used
20 by its branch offices in Oregon. Bankers Life shall also conduct a Branch Training
21 Utilization Review annually for two (2) years to verify the branch office's adherence
22 to Bankers Life's approved training systems and procedures, suitability,
23 replacement and disclosure requirements under Oregon insurance law, and the
24 processes and procedures specified in this Corrective Action Plan. Bankers Life
25 shall prepare a report of each review and send it to the Director within thirty (30)
26 days after each review.

27 27. The selection of any independent reviewers, contractors, or auditors shall be
28 subject to review and approval by the Director. The Director may attend any review
29 required by this Corrective Action Plan.

1 28. Within sixty (60) days of the date of the final order Bankers Life shall
2 contract with a third party to conduct unannounced visits for a period of two years
3 of Bankers Life's branch offices in Oregon to test their compliance with Oregon's
4 suitability standards. The visits shall occur once a quarter during the first year and
5 once a year during the second year. The third party shall prepare a report of each
6 visit and send it to Bankers Life. Bankers Life shall send the report to the Director
7 within fifteen (15) days after receiving the report. Bankers Life shall reverse the
8 commissions or other compensation paid to any manager or producer for the sale of
9 any policy later deemed unsuitable.

10 29. Within fifteen (15) days of the date of the final order, Bankers Life shall
11 establish a complaint system whereby field personnel can notify Bankers Life's
12 home office of suitability, replacement, and disclosure infractions with complete
13 confidentiality. Bankers Life shall record all complaints brought to the attention of
14 Bankers Life, its branch offices, managers, or producers including the date of the
15 complaint, a description of the investigation conducted, and the resolution achieved.
16 Such records shall be made available to the Director upon request. Bankers Life
17 shall also investigate within fifteen (15) business days of notice, whether written or
18 oral, all allegations of any infraction and all consumer complaints. This paragraph
19 applies only to complaints brought directly to the attention of Bankers Life or its
20 branch, unit or regional managers. This paragraph does not apply to complaints
21 brought to the attention of Bankers Life by the Director. Bankers Life shall prepare
22 a report of the complaints and investigations. The first report shall be for the
23 period from the date of the final order to 10/31/09. The second report shall be for
24 the period from 11/1/09 to 10/31/10. Bankers Life shall send the report to the
25 Director within thirty (30) days after the end of the report period.

26 30. Within fifteen (15) days of the date of the final order, Bankers Life shall
27 notify each of its Oregon branches in writing that all documents containing the
28 signature of an Oregon consumer must be retained by Bankers Life's image
29 repository system for a minimum of three years from the date of expiration of the
30 annuity in accordance with ORS 744.068.

1 31. On or before 1/1/09, and every three (3) months thereafter for two (2) years,
2 Bankers Life shall participate in quarterly meetings with the Director to ensure
3 that Bankers Life is in compliance with this Corrective Action Plan and that all
4 consumer complaints are addressed appropriately by Bankers Life, and that all
5 areas of concern identified by the Director are addressed. Within thirty (30) days of
6 the date of the final order, Bankers Life shall identify its representatives that will
7 attend such meetings.

8 32. Nothing in this Corrective Action Plan absolves the responsibility of any
9 appointed producer of Bankers Life.

10 33. Bankers Life shall be excused from performance for any period and to the
11 extent that it is prevented from performing any services, in whole or in part, as a
12 result of delays caused by an act of God, civil disturbance, court order, or other
13 cause beyond its reasonable control, including failures or fluctuations in electrical
14 power, light, or telecommunications equipment and such nonperformance shall not
15 be considered for determining Banker's Life's compliance with this Stipulation.
16 Notwithstanding the above, Bankers Life agrees to establish and maintain
17 commercially reasonable recovery steps, including technical disaster recovery
18 facilities, uninterruptible power supplies for computer equipment and
19 communications and that as a result thereof Bankers Life will use commercially
20 reasonable efforts to ensure that its systems shall be operational within forty-eight
21 (48) hours of a performance failure.

22 34. All written information submitted to the Director or made available to the
23 Director as a result of or in connection with this order is an "insurance compliance
24 self-evaluative audit document" for purposes of ORS 731.760 to 731.770 and shall
25 not be subject to disclosure or production under ORS 192.410 to 192.505 and shall
26 not be subject to the exceptions in ORS 731.768.

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Dated October 28, 2008

Bankers Life and Casualty Company

/s/ Scott R. Perry
[Signature of Representative]
Scott R. Perry
[Printed Name of Representative]
President
[Printed Title of Representative]

FINAL ORDER

The Director incorporates herein the above stipulation, adopts it as the Director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated October 30, 2008

/s/ Cory Streisinger
Cory Streisinger
Director
Department of Consumer and Business Services

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