

TO: Karen Winkel, Rules Coordinator, Oregon Department of Consumer and Business Services
Insurance Regulation

FROM: Brenda J. Cude, Professor Emerita, University of Georgia (bcude@uga.edu)

RE: Disclosure and care obligations for recommendations or sales of annuities to prospective purchaser

DATE: May 14, 2024

Enclosed are my comments on the Insurance Agent Disclosure Form for Annuities. I converted the file from PDF to Word and used Track Changes to make my edits. I also have included a clean version of the edited form (note that some formatting decisions remain to be made). I will categorize and describe the edits have suggested below.

1. Format changes to make the document look more readable and important. Primarily this meant that I increased the font size.
2. Removing the capitalization of "you" and "your." These words would only be capitalized in legal documents. Capitalization here makes the document appear less readable and increases the likelihood that it will be viewed as a legal document rather than a document relevant to consumers.
3. Made wording changes to lower the overall reading level of the document.
4. Asked if Fixed and Fixed Indexed Annuities should be on separate lines.
5. Added Exchange Traded Funds to the line identifying Mutual Funds.
6. Suggested the addition of a line in which the agent would reveal whether they follow a fiduciary standard. This seems especially relevant given the release of the Department of Labor rule.
7. Made substantive changes to the "What duty of care do I owe you, the customer" language to remove references to subsections of Oregon law. These references would be meaningless to consumers who don't know the details of the law. In addition, the language in this section seems to communicate the substance of the law. If it is important to refer readers to the law, that could be done with a weblink (although I would note that it is extremely difficult to find the subsections in the law as formatted [here](#)). In addition, I have proposed a more substantive statement about material conflicts of interest ("I must identify and avoid, or reasonably manage, any material conflicts of interest that would influence the advice I give you.")
8. Changed language to indicate that the annuity recommendation would be attached to the form as would a statement about material conflicts of interest.

I have made the changes described in Items 1-3 above in the "Consumer Refusal to Provide Information" and "Consumer Decision to Purchase an Annuity NOT Based on a Recommendation" forms. In addition, on the "Consumer Refusal to Provide Information" form, I have changed the wording to indicate that the list of missing information would be attached to the form. On the "Consumer Decision to Purchase an Annuity NOT Based on a Recommendation" form, I have changed the wording to indicate that the annuity recommendation would be attached to the form.

On both forms, I changed the wording of the consumer statement so "you" refers to the consumer as it does throughout the document.

Please let me know if you have any questions.

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES

Do ~~n~~ot ~~s~~ign ~~u~~nless ~~y~~ou ~~h~~ave ~~r~~ead and ~~u~~nderstand the ~~i~~nformation in this ~~f~~orm

Date: _____

~~INSURANCE AGENT (PRODUCER) INFORMATION~~ 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 Oregon: _____

~~CUSTOMER INFORMATION~~ Customer Information (“You”, “Your”)

First Name: _____ Last Name: _____

What ~~t~~ypes of ~~p~~roducts ~~c~~an I ~~s~~ell ~~y~~ou?

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

I offer the following products:

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

Commented [BC1]: Should these be on separate lines?

I ~~need~~ am required to have a separate license to ~~provide~~ give 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~~ give advice about ~~or to~~ and sell.

- Mutual Funds/Exchange Traded Funds
- Stocks/Bonds
- Certificates of Deposits

~~Whose~~ Which annuities ~~c~~an I ~~s~~ell to ~~y~~ou?

I am authorized to sell:

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

Commented [BC2]: Add list of all insurers?

How am I'm pPaid for mMy wWork?:

It's important ~~for that y~~You to understand how I'm paid for my work. Depending on the particular annuity ~~y~~You purchase buy, I may be paid a commission ~~and/or~~ a fee. ~~The insurance company usually pays me any c~~Commissions ~~are generally paid to Me~~I earn by selling annuities and you pay any fees owed for an annuity ~~by the insurance company while fees are generally paid to Me by the consumer~~. If ~~y~~You have questions about how I'm paid, please ask ~~m~~Me.

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

- ~~Commission, which the insurance company usually pays. If another source is paying the commission for this annuity, the source is: 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 you by~~ the customer, ~~usually pay~~.
- Other ~~cash compensation~~ (Describe): _____

If ~~y~~You have questions about the above compensation how I will be paid for this transaction, please

~~If you buy this annuity, I may also receive other indirect-noncash compensation-resulting from this transaction. (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, and/or other incentives from the insurance company or other sources.~~

What duty of care do I owe ~~y~~You, the customer?

~~ORS 743.262~~By Oregon state law (ORS 743.262) ~~I am required to exercise reasonable skill, diligence, and care when I making a recommendation and recommend an annuity. I must satisfy all of the care obligation requirements stated in Subsection (4); consider your financial situation, insurance needs, and financial obligations before I recommending or selling an annuity. I am obligated to prominently disclose fill in all of the information on this form all of the information required in Subsection (5); I must identify and avoid, or reasonably manage, any material conflicts of interest-that would influence the advice I give you. stated in Subsection (6)When; and at the time I make a recommendation or sell an annuity, I must record in attach to this form writing the substance of and basis for mMy recommendation, and meet all of the documentation requirements stated in Subsection (7)in Oregon state law.~~

- I have ~~attached provided You with a written~~ copy of the annuity recommendation, including ~~the basis of how it was~~ determined that the recommended product effectively meets your financial situation, insurance needs, and financial objectives. ~~I also have attached a statement identifying whether I have any material conflicts of interest that would influence the advice I give you and, if so, how I would avoid or reasonably manage them.~~
- I follow a fiduciary standard and am acting in your best interests.

By signing below, ~~y~~You ~~acknowledge-agree~~ that ~~y~~You have read and understand the information ~~provided to You in this document~~.

Customer Signature

Date

Agent (Producer) Signature

~~Date~~

Date

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do ~~u~~Not ~~s~~Sign ~~u~~Unless ~~y~~You ~~h~~Have ~~r~~Read and ~~u~~Understand the ~~i~~Information in this ~~f~~Form.

Why are ~~y~~You seeing ~~being given~~ this form?

You are buying a financial product – an annuity.

To recommend a product that effectively meets ~~y~~Your financial situation, insurance needs and financial objectives ~~needs, objectives and situation~~, the agent, broker, or company needs information about ~~y~~You ~~and~~; ~~y~~Your needs, objectives and situation ~~financial situation, insurance needs and financial objectives~~.

If ~~y~~You sign this form, it means ~~y~~You have **not** given the agent, broker, or company some or all the information ~~they needed~~ to decide if the annuity effectively meets ~~y~~Your situation, needs and ~~objectives and situation~~. You may lose protections you are entitled to under the ~~-~~Insurance Code of Oregon (ORS 743.262(17)) if ~~y~~You sign this form or provide inaccurate information.

What duty of care do I owe ~~y~~You, the customer?

- I have ~~attached~~ ~~provided~~ ~~You with~~ a written list of the specific information that ~~y~~You did not give the agent, broker, or company that is necessary to decide if the annuity effectively meets ~~y~~Your financial situation, insurance needs, and financial objectives.

~~Statement of Purchaser:~~ What does it mean if you sign this form? It means you

- ~~I~~ **REFUSE** to ~~provide~~ ~~give~~ the ~~needed~~ ~~is~~ information at this time ~~or~~.
- ~~I~~ ~~h~~ ~~h~~ Have chosen to provide **LIMITED** information at this time.

Customer Signature

Date

Agent/Producer ~~Signature~~ Signature
~~Date~~

Date

Consumer Decision to ~~Purchase~~ Buy an Annuity NOT Based on a Recommendation

Do ~~u~~Not ~~s~~Sign ~~This Form~~ ~~u~~Unless ~~y~~You ~~h~~Have ~~r~~Read and ~~u~~Understand ~~in the information in this form~~.

Why are ~~y~~You ~~seeing being given~~ this form?

You're ~~are~~ buying a financial product – an annuity.

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

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

What duty of care do I owe you, the customer?

I have ~~provided You with~~ attached a written copy of ~~my~~the annuity recommendation, including ~~the basis of how it was~~ determined that the ~~recommended~~ product I recommended effectively meets your financial situation, insurance needs, and financial objectives.

What does it mean if you sign this form? It means: ~~Statement of Purchaser:~~

~~I~~ ~~u~~You understand that ~~you are~~ ~~I am~~ buying an annuity, but the agent, broker or company did not recommend ~~that this annuity for you~~ ~~I buy it~~. If ~~you~~ ~~I~~ buy an annuity ~~that we did not recommend, you understand~~

you without a recommendation, I understand ~~I~~ may lose protections under the Insurance Code of Oregon (ORS 743.262(17)).

Customer Signature

Date

Agent/Producer Signature

Date

Date

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 Oregon: _____

Customer Information (“You”, “Your”)

First Name: _____ Last Name: _____

What types of products can I sell you?

I am licensed in Oregon to sell annuities to you . If I recommend that you buy an annuity, it means I believe that annuity effectively meets your financial situation, insurance needs and financial objectives. Other financial products, such as life insurance, stocks, bonds and/or mutual funds, also may meet your needs.

I offer the following products:

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

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

- Mutual Funds/Exchange Traded Funds
- Stocks/Bonds
- Certificates of Deposit

Which annuities can I sell to you?

I am authorized to sell:

<input type="checkbox"/> Annuities from only one 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 am I paid for my work?

It's important that you to understand how I'm paid for my work. Depending on the particular annuity you buy, I may be paid a commission and/or a fee. The insurance company usually pays me any commissions I earn by selling annuities and you pay any fees owed for an annuity. If you have questions about how I'm paid, please ask me.

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

- Commission, which the insurance company usually pays. If another source is paying the commission for this annuity, the source is: _____
- Fees (such as a fixed amount, an hourly rate, or a percentage of your payment) which you, the customer, usually pay.
- Other cash compensation (Describe): _____

If you have questions about how I will be paid for this transaction, please ask me.

If you buy this annuity, I may also receive other noncash compensation, such as health or retirement benefits, office rent and support, and other incentives from the insurance company or other sources.

What duty of care do I owe you, the customer?

By Oregon state law (ORS 743.262) I am required to exercise reasonable skill, diligence, and care when I recommend an annuity. I must consider your financial situation, insurance needs, and financial obligations before I recommend or sell an annuity. I am obligated to fill in all of the information on this form . I must identify and avoid, or reasonably manage, any material conflicts of interest that would influence the advice I give you. When I recommend or sell an annuity, I must attach to this form the substance of and basis for my recommendation, and meet all of the documentation requirements in Oregon state law.

- I have attached a copy of the annuity recommendation, including how I determined that the recommended product effectively meets your financial situation, insurance needs, and financial objectives. I also have attached a statement identifying whether I have any material conflicts of interest that would influence the advice I give you and, if so, how I would avoid or reasonably manage them.

- I follow a fiduciary standard and am acting in your best interests.

By signing below, you agree that you have read and understand the information in this document.

Customer Signature

Date

Agent (Producer) Signature

Date

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do not sign unless you have read and understand the information in this form.

Why are you seeing this form?

You are buying a financial product – an annuity.

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

If you sign this form, it means you have **not** given the agent, broker or company some or all the information they need to decide if the annuity effectively meets your situation, needs and objectives. You may lose protections you are entitled to under the Insurance Code of Oregon (ORS 743.262(17)) if you sign this form or provide inaccurate information.

What duty of care do I owe you, the customer?

- I have attached a written list of the specific information that you did not give the agent, broker or company that is necessary to decide if the annuity effectively meets your financial situation, insurance needs and financial objectives.

What does it mean if you sign this form? It means you

- REFUSE** to give the needed information at this time *or*
- Have chosen to provide **LIMITED** information at this time.

Customer Signature

Date

Agent/Producer Signature

Date

Consumer Decision to Buy an Annuity NOT Based on a Recommendation

Do not sign unless you have read and understand in the information in this form.

Why are you seeing this form?

You're buying a financial product – an annuity.

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

If you sign this form, it means you know that you're buying an annuity that we **did not** recommend.

What duty of care do I owe you, the customer?

- I have attached a written copy of my annuity recommendation, including how I determined that the product I recommended effectively meets your financial situation, insurance needs and financial objectives.

What does it mean if you sign this form? It means:

You understand that you are buying an annuity, but the agent, broker or company did not recommend this annuity for you. If you buy an annuity that we did **not** recommend, you understand you may lose protections under the Insurance Code of Oregon (ORS 743.262(17)).

Customer Signature

Date

Agent/Producer Signature

Date