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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED

04/29/2024 2:16 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Establishes disclosure and care obligations for recommendations or sales of annuities to prospective purchasers.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/29/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/22/2024

TIME: 9:00 AM - 9:30 AM

OFFICER: Brian Fjeldheim

IN-PERSON HEARING DETAILS

ADDRESS: Labor and Industries Building, 350 Winter St. NE, Basement, Conf Rm E, Salem, OR 97301

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 601656090

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams:

Meeting ID: 245 323 494 463

Passcode: 6LU8XV

NEED FOR THE RULE(S)

Senate Bill 536 (SB 536), codified at ORS 743.262, was adopted during the 2023 Legislative Session and establishes disclosure and care obligations for sales of annuities to prospective purchasers. SB 536 closely aligns with the National Association of Insurance Commissioners (NAIC) updated Model Regulation #275 - Suitability in Annuity Transactions Model Regulation.

In 2020, the NAIC revised Model Regulation #275 language by incorporating a consumer disclosure and care obligations for annuity sales, a higher level of consumer care compared to the previous product suitability standard.

Under these standards, insurance producers, insurers, and securities-brokers must meet specific care obligation in recommending products to consumers by taking into account the circumstances known at the time an annuity product recommendation is made.

More than ten years ago, the Department of Consumer and Business Services (DCBS) adopted the earlier version of the NAIC's Model Regulation #275 via rulemaking (OAR 836-080-0170 to -0193), establishing a product suitability standard. Regarding OAR 836-080-0170 to 836-080-0193, SB 536 duplicates nearly all of the language currently in rule and adds/revises language where necessary to establish the disclosure and care obligations. In effect, SB 536 supersedes existing rule language pertaining to annuity product suitability. Additionally, rulemaking is required to effectuate certain components of the bill, including adopting forms that are same/similar to NAIC Model Regulation #275:

- Insurance Agent (Producer) Disclosure for Annuities,
- Consumer Refusal to Provide Information, and
- Consumer Decision to Purchase an Annuity NOT Based on a Recommendation.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

Senate Bill 536 Enrolled

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB536/Enrolled>.

Codified at ORS 743.262

https://www.oregonlegislature.gov/bills_laws/ors/ors743.html.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Application of the disclosure and care obligations adds consumer protections to many potential annuity purchasers. Rulemaking Advisory Committee (RAC) members did not identify any potential harms or disparate treatment to any specific consumer population that would result from this rulemaking. To the extent that the disclosure and care obligations will result in consumers purchasing annuities products more suited to their financial planning needs, this rulemaking can be expected to disproportionately benefit consumers most at risk of adverse financial consequences in the event of purchasing inappropriate products. Such consumers would be more likely to be lower-income or otherwise economically disadvantaged relative to other purchasers of annuities products.

FISCAL AND ECONOMIC IMPACT:

The proposed rule changes are unlikely to have a fiscal or economic impact on small businesses. During the 2023 Legislative Session, proponents of SB 536, the American Council of Life Insurers (ACLI) and the National Association of Insurance and Financial Advisors (NAIFA), testified that their members were already voluntarily using the disclosure and care obligations and did not indicate that doing so was creating an adverse economic impact on small businesses. Many insurance agencies in Oregon are small businesses.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the

expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Based on currently available information, the proposed rule will not have a fiscal or economic impact on state agencies, local government units, or the general public beyond the statutory requirements. DCBS is not likely to be economically impacted by this rulemaking.

DCBS is proposing to add clarifying language to the NAIC adopted forms that is “substantially similar” to the NAIC drafted forms and is provided in Exhibits 1A-3A.

In general, the industry representatives strongly prefer that DCBS use the NAIC drafted forms currently in use with temporary rule Exhibits 1-3, and that “substantially similar” language be limited to changes such as adding a company logo or contact information to the forms. The parties representing life insurers and the annuity industry want conformity amongst the states and that only NAIC drafted forms be used. Industry representatives indicated that using NAIC forms with additional language adds complexity and will place a burden on insurers, agents and producers, and the annuity industry, especially those conducting business in multiple jurisdictions.

The industry representatives did not quantify the potential costs or burdens to small businesses, insurers, or agents/producers should the DCBS preferred Exhibits 1A-3A be adopted.

(2)(a) DCBS does not have a direct estimate of the number of small businesses subject to this rule. The RAC members did not have an estimate for the number of small businesses that will be impacted by this rulemaking but did indicate the proposed rule is unlikely to have a significant financial impact on affected businesses.

(2)(b) Based on the available information, including feedback from the RAC, this rulemaking should have minimal impact upon reporting, recordkeeping, and other administrative activities required for compliance. Additionally, ORS 84.019 grants electronically signed documents and electronic records the same legal status as physical documents, allowing producers and insurers to store all manner of records associated with annuity sales electronically.

Industry representatives indicated that using NAIC forms with additional language adds complexity and will place additional administrative burden on insurers, agents and producers, and the annuity industry, especially those conducting business in multiple jurisdictions.

(2)(c) Based on current information, including feedback from the RAC, the proposed rules do not impose additional costs for professional services, equipment supplies, labor, and increased administration beyond the underlying statutory requirements.

Licensed insurance producers that sell annuities already have to complete a minimum four-hour training course to obtain authority to sell annuities. For producers that have already completed a four-hour course prior to January 1, 2024, a supplemental one-hour course from a content provider registered with DCBS will be needed in order to continue selling annuities after January 1, 2024.

The industry representatives did not quantify the potential costs of DCBS preferred Exhibits 1A-3A.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Representatives of small businesses, to include insurance and consumer financial products trade associations, were invited and participated in the rulemaking advisory committee process.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

836-051-0905, 836-080-0170, 836-080-0172, 836-080-0175, 836-080-0178, 836-080-0180, 836-080-0183, 836-080-0185, 836-080-0188, 836-080-0190, 836-080-0193

AMEND: 836-051-0905

RULE SUMMARY: Modifies the requirements of this rule to include/correct 408(k) and (p) plans to align with ORS 743.262.

CHANGES TO RULE:

836-051-0905

Applicability and Scope ¶¶

(1) OAR 836-051-0900 to 836-051-0925 apply to all group and individual annuity contracts and certificates except:¶¶

(a) ~~Registered or non-registered variable annuities or other registered products;~~¶¶

~~(b)~~ Immediate and deferred annuities that contain no nonguaranteed elements except as provided in OAR 836-051-0920(2);¶¶

~~(e)~~ Annuities used to fund:¶¶

(A) An employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);¶¶

(B) A plan described by Sections 401(a), 401(k) ~~or 403(b)~~, 403(b), or 408(k) or (p) of the Internal Revenue Code, when the plan, for purposes of ERISA, is established or maintained by an employer;¶¶

(C) A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or¶¶

(D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.¶¶

~~(e)~~ Structured settlement annuities; and¶¶

~~(e)~~ Funding agreements.¶¶

(2) OAR 836-051-0900 to 836-051-0925 also apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and when the insurer has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. A direct solicitation under this section does not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.¶¶

(3) OAR 836-051-0900 to 836-051-0925 apply to annuity contracts that are sold on or after October 1, 2008. An insurer may conform its contracts to the provisions of OAR 836-051-0900 to 836-051-0925 prior to that date.

Statutory/Other Authority: ORS 731.244, ORS 743.262

Statutes/Other Implemented: ~~ORS 746.110, 746.240, 742.009, 746.075, 746.085, 746.110~~ ORS 743.262, 746.24100

AMEND: 836-080-0170

RULE SUMMARY: Provides a reference to the relevant statute through which the rules can be adopted. Establishes disclosure and care obligations for insurance annuity sales.

CHANGES TO RULE:

836-080-0170

Statutory Authority; Purpose ¶¶

(1) OAR 836-080-0170 to 836-080-0190 are issued under the general rulemaking authority of the director in ORS 731.244 to aid in the effectuation of ORS Chapter 746, especially the provisions of ORS 746.100, 746.110, and 746.240. Additional rulemaking authority is also conferred under the provisions of ORS 743.262(5)(a), (7)(b), (13)(b) - (c), (14)(b), and (17)(c).¶¶

(2) The purpose of this rule is to require insurproducers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to disclose certain information when making a recommendation of an annuity and to require insurers that result in transactions involving annuity products to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.¶¶

(3) ~~Nothing in OAR 836-080-0170 to 836-080-0190 shall be construed to do not~~ create or imply a private cause of action for a violation of OAR 836-080-0170 to 836-080-0190 or subject a producer to civil liability under the disclosure and care requirements outlined in ORS 743.262(4) or under standards that govern the conduct of a fiduciary or a fiduciary relationship.

Statutory/Other Authority: ORS 731.244, ORS 743.262

Statutes/Other Implemented: ORS 746.100, 746.110, 746.240, ORS 743.262

AMEND: 836-080-0172

RULE SUMMARY: Designates applicability of OAR 860-080-0170 to 836-080-0190 to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no insurance producer is involved. Inserts new language pertaining to: 1) obligation of producers to provide the consumer with a written copy for each annuity recommendation; and 2) three DFR modified NAIC Model Regulation #275 forms.

CHANGES TO RULE:

836-080-0172

Applicability and Disclosure Forms ¶

(1)(a) Except as provided in OAR 836-080-0172(1)(b), OAR 836-080-0170 to 836-080-0190 applies to any sale or recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer of an annuity. ¶

(b) OAR 836-080-0170 to 836-080-0190 does not apply to the transactions described in ORS 743.262(2)(b). ¶

(2) A producer, before making a recommendation of or selling an annuity to a consumer, shall make the disclosures required under ORS 743.262(5)(a) by means of a form substantially similar to the form identified as "Insurance Agent (Producer) Disclosure for Annuities - Exhibit 1A" on the Department of Consumer and Business Services website at dfr.oregon.gov. ¶

(3) In addition to making the disclosures required under OAR 836-080-0172(2), a producer, at the time the producer recommends or sells an annuity to a consumer where no insurance producer is involved, that results in the purchase, exchange or replacement recommended, shall: ¶

(a) Provide the consumer a copy of the written record of the producer's annuity recommendation, including the basis of how the producer determined the recommendation; and ¶

(b) If a consumer refuses to provide consumer profile information specified in ORS 743.262(1)(d), obtain the signed statement required under ORS 743.262(7)(b)(A) by means of a form substantially similar to the form identified as "Consumer Refusal to Provide Information - Exhibit 2A" on the Department of Consumer and Business Services website at dfr.oregon.gov; and ¶

(c) If a consumer enters into an annuity transaction that is not based on a producer's recommendation, obtain the signed statement required under ORS 743.262(7)(b)(B) by means of a form substantially similar to the form identified as "Consumer Decision to Purchase an Annuity Not Based on a Recommendation - Exhibit 3A" on the Department of Consumer and Business Services website at dfr.oregon.gov.

Statutory/Other Authority: ORS 731.244, ORS 743.262

Statutes/Other Implemented: ORS 746.100, 746.110, 746.240, ORS 743.262

REPEAL: 836-080-0175

RULE SUMMARY: Denotes exemptions to OAR 836-0170 to 836-080-0190. This language is no longer necessary in rule due to same/similar language adopted in ORS 743.262(2)(b).

CHANGES TO RULE:

~~836-080-0175~~

~~Exemptions~~

~~Unless otherwise specifically included, OAR 836-080-0170 to 836-080-0190 do not apply to transactions involving:~~

- ~~(1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to OAR 836-080-0170 to 836-080-0190;~~
- ~~(2) Contracts used to fund:~~
 - ~~(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act as amended;~~
 - ~~(b) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, as amended, if established or maintained by an employer;~~
 - ~~(c) A government or church plan defined in section 414 of the Internal Revenue Code, 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 Internal Revenue Code;~~
 - ~~(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.~~

~~Statutory/Other Authority: ORS 731.244~~

~~Statutes/Other Implemented: ORS 746.100, 746.110, 746.240~~

AMEND: 836-080-0178

RULE SUMMARY: Eliminates definitions pertaining to annuity sales conducted under the superseded product suitability standard. Certain definitions for the disclosure and care obligations provided in ORS 743.262(1)(a-l) are included here for clarity: 1) "Annuity"; 2) "Producer"; and 3) "Recommendation".

CHANGES TO RULE:

836-080-0178

Definitions ¶¶

~~(1)(a) "Annuity" means an insurance product t:¶¶~~

~~(A) An agreement to make periodic payments, whether fixed or variable, in an amount:¶¶~~

~~(i) That is individually solicited, whether the product agreement is classified as an individual annuity or a group annuity.¶¶~~

~~(2; and¶¶~~

~~(ii) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities, which the obligation to make all or some of the periodic payments, or the amount of any periodic payment, depends upon the continuance of human life; and¶¶~~

~~(3B) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities, at safeguard the agreement from lapse ofr this state to provide a special surrender value or special benefit or annuity if the annuitant becomes totally and permanently disabled.¶¶~~

~~(4b) "Recommendation" means advice provided by an insurance producer, or an insurer where no insurance producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.¶¶~~

~~(5) "Replacement" has the meaning given in OAR 836-080-0005 Annuity" does not include:¶¶~~

~~(A) A charitable remainder annuity trust or a charitable remainder unitrust as defined in Section 664(d) of the Internal Revenue Code; or¶¶~~

~~(B) Payments made in accordance with settlement provisions of a life insurance policy.¶¶~~

~~(62) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:¶¶~~

~~(a) Age; Producer" means a person that is licensed under ORS 744.052 to 744.089 or an insurer, if the insurer solicits, negotiates or sells an annuity without involving a producer.¶¶~~

~~(b3) Annual in "Recommen;¶¶~~

~~(c) Financial situation and needs, including the financial resources used for the funding of the annuity;¶¶~~

~~(d) Financial experience;¶¶~~

~~(e) Financial objectives;¶¶~~

~~(f) Intended use of th" means a producer's advice to a consumer that the producer intends as an inducement to sell, exchange or replace an annuity;¶¶~~

~~(g) Financial time horizon;¶¶~~

~~(i) Exist or that results in assets, including investment and life insurance holdings;¶¶~~

~~(j) Liquidity needs;¶¶~~

~~(k) Liquid net worth;¶¶~~

~~(l) Risk tolerance; and¶¶~~

~~(m) Tax status sale, exchange or replacement of an annuity in accordance with the producer's advice.~~

Statutory/Other Authority: ORS 731.244, ORS 743.262

Statutes/Other Implemented: ORS 746.100, 746.110, 746.240, ORS 743.262

REPEAL: 836-080-0180

RULE SUMMARY: Prescribed the duties and responsibilities of insurance producers and insurance companies to sell annuities to consumers using a product suitability standard. The product suitability standard has been superseded by the disclosure and care obligations provided in ORS 743.262(2)-(3). Note: disclosure and care obligations are an extensive component of SB 536.

CHANGES TO RULE:

836-080-0180

~~Duties of Insurers and of Insurance Producers~~

- ~~(1) As used in this rule, "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.¶¶~~
- ~~(2) In addition to the disclosure requirements of OAR 836-051-0900 to 836-051-0925, 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 insurance 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, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:¶¶~~
- ~~(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;¶¶~~
- ~~(b) The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization or death or living benefit;¶¶~~
- ~~(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and¶¶~~
- ~~(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:¶¶~~
- ~~(A) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;¶¶~~
- ~~(B) The consumer would benefit from product enhancements and improvements; and¶¶~~
- ~~(C) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.¶¶~~
- ~~(3) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.¶¶~~
- ~~(4) Except as permitted under section (3) of this rule, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.¶¶~~
- ~~(5)(a) Except as provided under subsection (b) of this section, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:¶¶~~
- ~~(A) No recommendation is made;¶¶~~
- ~~(B) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;¶¶~~
- ~~(C) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or¶¶~~
- ~~(D) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.¶¶~~
- ~~(b) An insurer's issuance of an annuity subject to subsection (a) of this section shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.¶¶~~
- ~~(6) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:¶¶~~
- ~~(a) Make a record of any recommendation subject to section (2) of this rule;¶¶~~
- ~~(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and¶¶~~

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

(7)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with OAR 836-080-0170 to 836-080-0190. The supervision system must include but need not be limited to, the following:¶¶

(A) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of OAR 836-080-0170 to 836-080-0190 and shall incorporate the requirements of OAR 836-080-0170 to 836-080-0190 into relevant insurance producer training manuals;¶¶

(B) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of OAR 836-080-0185;¶¶

(C) The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its insurance producers;¶¶

(D) The insurer shall maintain procedures to review each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. The review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;¶¶

(E) The insurer shall maintain a reasonable procedure to detect recommendations that are not suitable. The procedure may include, but need not be limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this paragraph prevents an insurer from complying with this paragraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and¶¶

(F) The insurer annually shall provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.¶¶

(b)(A) Nothing in this section restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under subsection (a) of this section. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under OAR 836-080-0185 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (B) of this paragraph.¶¶

(B) An insurer's supervision system under subsection (a) of this section shall include supervision of contractual performance under this subsection. The supervision must include, but is not limited to, the following:¶¶

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and¶¶

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

(C) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.¶¶

(8) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:¶¶

(a) Truthfully responding to an insurer's request for confirmation of suitability information;¶¶

(b) Filing a complaint; or¶¶

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

(9)(a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under OAR 836-080-0170 to 836-080-0190. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the director's ability to investigate and enforce the provisions of 836-080-0170 to 836-080-0190.¶¶

(b) In order for subsection (b) to apply, an insurer shall:¶¶

(A) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and¶¶

(B) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Statutory/Other Authority: ORS 731.244

Statutes/Other Implemented: ORS 746.100, 746.110, 746.240

AMEND: 836-080-0183

RULE SUMMARY: Prescribed the required training for producers necessary to recommend and sell annuities to consumers using the product suitability standard. 2023 SB 536(13-15) adopts similar language pertaining to disclosure and care obligations training requirements. Note: OAR 836-080-0183(2)(d-h) references ORS 744.072 and OAR 836-071-0180 to 836-071-0250 requirements for training course providers, it may be advisable to keep these references in an amended rule.

CHANGES TO RULE:

836-080-0183

Insurance Producer Training ¶¶

~~(1) An insurance producer shall~~may not solicit the sale of an annuity ~~product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer provided product specific training standards and materials to comply with this section.~~¶¶

~~(2)(a)(A) An insurance producer who engages in the sale of annuity products shall complete a one-time four credit training course provided by a continuing education provider registered with the department.~~¶¶

~~(B) Individuals who obtain a life insurance line of authority on or after the effective date of OAR 836-080-0170 to 836-080-0190 may not engage in the sale of annuities until the insurance producer completes the annuity training course required under this section.~~¶¶

~~(b) The minimum length of the training required under this section shall be sufficient to qualify for at least four continuing education credits, but may be longer.~~¶¶

~~(c) The training required under this subsection shall include information on the following topics:~~¶¶

~~(A) The types of annuities and various classifications of annuities;~~¶¶

~~(B) Identification of the parties to an annuity;~~¶¶

~~(C) How fixed, variable and indexed annuity contract provisions affect consumers;~~¶¶

~~(D) The application of income taxation of qualified and non-qualified annuities;~~¶¶

~~(E) The primary uses of annuities; and~~¶¶

~~(F) Appropriate sales practices, replacement and disclosure requirements.~~¶¶

~~(d) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.~~¶¶

~~(e) that is adequate to make a recommendation of the annuity, has complied with the insurer's standards for product training, and meets the requirements of ORS 743.262(13).~~¶¶

~~(2)(a) A provider of an annuity training course intended to comply with this section shall register as a continuing education provider in this state and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in ORS 744.072 and OAR 836-071-0180 to 836-071-0250.~~¶¶

~~(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with ORS 744.072 and OAR 836-071-0180 to 836-071-0250.~~¶¶

~~(g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with OAR 836-071-0180 to 836-071-0250.~~¶¶

~~(h) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this section in this state.~~¶¶

~~(i) An insurer shall verify that an insurance producer has completed the annuity training course required under this section before allowing the insurance producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance continuing education providers.~~

Statutory/Other Authority: ORS 731.244, ORS 743.262

Statutes/Other Implemented: ORS 746.100, 746.110, 746.240, ORS 743.262

AMEND: 836-080-0185

RULE SUMMARY: The director may order insurers, producers, and independent agencies to take reasonable corrective action for a consumer harmed by a violation of OAR 836-080-0170 to 836-080-0190. The same/similar language is now provided in ORS 743.262(17).

CHANGES TO RULE:

836-080-0185

Compliance Mitigation; Penalties ¶

~~(1) An insurer is responsible for compliance with OAR 836-080-0170 to 836-080-0190. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the director may order:¶
(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by violation of OAR 836-080-0170 to 836-080-0190 by the insurer, or by the insurer's producer;¶
(b) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of OAR 836-080-0170 to 836-080-0190; and¶
(c) Appropriate penalties and sanctions.¶~~
(2) Violation of any provision of OAR 836-080-0170 to 836-080-0190 is an unfair trade practice under ORS 746.240.

Statutory/Other Authority: ORS 731.244, ORS 743.262

Statutes/Other Implemented: ORS 746.100, 746.110, 746.240, ORS 743.262

REPEAL: 836-080-0188

RULE SUMMARY: Prescribes record keeping requirements for insurers, general agents, independent agencies, and insurance producers. The same/similar language is now provided in ORS 743.262(16).

CHANGES TO RULE:

~~836-080-0188~~

~~Recordkeeping~~

~~(1) Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the Director records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for three 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.¶~~

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

~~Statutory/Other Authority: ORS 731.244~~

~~Statutes/Other Implemented: ORS 746.100, 746.110, 746.240~~

AMEND: 836-080-0190

RULE SUMMARY: Disclosure to a consumer about the nature of an annuity in connection with an annuity sale is not a defense by itself that the annuity sale met requirements under ORS 743.262.

CHANGES TO RULE:

836-080-0190

Annuity Sales; Disclosure Not a Defense ¶¶

The fact that a person made a disclosure to a consumer about the nature of an annuity in connection with the sale of the annuity to the consumer is not a defense by itself to a determination by the ~~D~~director under OAR 836-080-0170 to 836-080-0188 that the ~~sale was unsuitable with respect to the consumer~~ annuity sale violated the care requirements under ORS 743.262.

Statutory/Other Authority: ORS 731.244, ORS 743.262

Statutes/Other Implemented: ORS 746.100, 746.110, 746.240, ORS 743.262

AMEND: 836-080-0193

RULE SUMMARY: Revises the operative date for revisions to OAR 836-080-0170 to 836-080-0190, becomes June 28, 2024.

CHANGES TO RULE:

836-080-0193

~~Effective Date and Operative Date ¶¶~~

~~(1) OAR 836-080-0170 to 836-080-0190 and the amendments to 836-080-0090 become operative on July 1, 2011, except that the requirement under 836-080-0183(2) shall become operative on August 1, 2011 or six months after the director determines that the requisite training is available.¶¶~~

~~(2) Insurance producers who hold a life insurance line of authority on the effective date of OAR 836-080-0170 to 836-080-0190 and who desire to sell annuities shall complete the requirements of 836-080-0183 within six months after July 1. The revisions to OAR 836-080-0170 to 836-080-0190 become operative on June 28, 2014.24.~~

~~Statutory/Other Authority: ORS 731.244, ORS 743.262~~

~~Statutes/Other Implemented: ORS 746.100, 746.110, 746.240, ORS 743.262~~