

DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF AGENT AND AGENCY SERVICES

NOTICE OF PROPOSED RULE DEVELOPMENT

RULE NUMBER:

RULE TITLE:

69B-162.011, F.A.C.

Suitability and Disclosure in Annuity ~~Investments Contracts~~-Forms-  
Required.

PURPOSE AND EFFECT: The proposed rule is amended to conform with revisions to s. 627.4554, F.S., as enacted by SB 166 (Chapter 2013-163, Laws of Florida). SB 166 substantially revised Florida consumer protection laws relating to the sales of annuities by incorporating the 2010 National Association of Insurance Commissioners (“NAIC”) Suitability in Annuity Transactions Model Regulation. The proposed rule extends protections previously afforded senior consumers in annuity transactions to consumers of any age. Forms DFS-H1-1980 and DFS-H1-1981 are revised to reflect the standards, procedures and guidelines of the 2010 NAIC Annuity Suitability Model Regulation, and s. 627.4554, F.S.

SUBJECT AREA TO BE ADDRESSED: Amendment to Conform Rule with Section 627.4554, F.S.

RULEMAKING AUTHORITY: 624.308(1), 627.4554(9), F.S.

LAW IMPLEMENTED: 627.4554, F.S.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

DATE AND TIME: Tuesday, February 18, 2014 @ 10:00 AM

PLACE: Room 116 Larson Building, 200 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Susan Jordan, Special Investigator, Bureau of Investigation, Division of Agent & Agency Services, Florida Department of Financial Services, 200 E. Gaines Street, Tallahassee, Florida 32399-0320 @ (850) 413-5655 or [Susan.Jordan@myfloridacfo.com](mailto:Susan.Jordan@myfloridacfo.com).

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed above.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

**69B-162.011 Suitability and Disclosure in Annuity Contracts – Forms Required.**

(1) Forms Adopted.

Forms DFS-H1-1980, “Annuity Suitability Questionnaire,” (Effective ~~10-01-1312-25-09~~) and DFS-H1-1981, “Disclosure and Comparison of Annuity Contracts” (Effective ~~10-01-1312-25-09~~), are adopted pursuant to ~~paragraphs~~Sections 627.4554(4)(b) and (d), F.S., and are hereby incorporated by reference. Copies of each form adopted and incorporated by reference in this rule are available from the Division of Agents and Agency Services, Department of Financial Services, Larson Building, Tallahassee, Florida 32399-0318 or <http://www.myfloridacfo.com/Agents/Licensure/Forms/defaultindex.htm>.

(2) Application.

This rule applies exclusively to any recommendation to purchase or exchange an annuity contract as defined in ~~paragraph~~Section 627.4554(2)(3), F.S., made to a ~~senior~~ consumer by an insurance agent or an insurer, which results in the purchase or exchange recommended. ~~A senior consumer is a person 65 years of age or older. In a joint purchase or exchange, if any party is 65 or older the joint purchasers are considered to be senior consumers.~~

(3) Duties of Insurers and Insurance Agents.

(a) Before executing a purchase or exchange of an annuity ~~to a senior consumer~~, an insurance agent or an insurer, unless exempted by ~~paragraph~~Section 627.4554(5)(i)(8), F.S., and required by the Financial Industry Regulatory Authority to perform an alternative suitability analysis, must use form DFS-H1-1980, Annuity Suitability Questionnaire incorporated in subsection (1) above, to obtain information in order to determine the suitability of the recommendation.

(b) In addition to obtaining the information required by paragraph (a), before executing a replacement or exchange of an annuity contract to a ~~senior~~ consumer, the insurance agent or insurer must also provide contract comparison information to the ~~senior~~ consumer utilizing form DFS-H1-1981, Disclosure and Comparison of Annuity Contracts, incorporated in subsection (1) above.

(c) The type face for all printed questions or requests for information that will be directly received or answered by the consumer, and all portions of the referenced forms relating to the disclosure requirements pursuant to paragraphs (3)(a) and (b) above, must be of least 12-point type.

(d) Nothing in this rule shall prevent an insurer from adapting the forms adopted in subsection (1) for its use, upon written approval of any modifications by the Department. The Department shall approve an insurer’s modification to the forms provided:

notdev

1. The forms still contain all of the same information as the Department forms referenced above;
2. The type size requirement of paragraph (3)(c) above is met;
3. Additional material added to the form does not obscure the information required, or rearrange the required information in such a way as to make it more difficult to find or understand;
4. The revised form does not contain misrepresentations or misleading statements, and is not in any other way in violation of ~~section~~Section 626.9541, F.S.

(e) Insurers are permitted to modify the form to use check-off boxes for indication of investment experience and risk tolerance, but shall not substitute check-off boxes for any other items on the form.

(f) The addition of an insurer's name, contact information, or trademark; the addition of borders; or changes in font which do not alter type size, do not require prior written approval by the Department.

(g) Approval by the Department does not preclude disapproval by the Florida Office of Insurance Regulation pursuant to any provision of the Florida Insurance Code, and rules adopted there under.

*Rulemaking Authority 624.308(1), 627.4554(9) FS. Law Implemented 627.4554 FS. History—New 12-25-09,*

*Amended \_\_\_\_\_.*