

Dear Senators ANDREASON, Coiner & Werk, and  
Representatives SCHAEFER, Bradford & Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Dept. Of Insurance: IDAPA 18.01.09 - Senior Consumer Protection in Annuity Transactions (Docket No. 18-0109-0801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 8-7-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 9-4-08.

\_\_\_\_\_The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

## **MEMORANDUM**

**TO:** Subcommittees for Administrative Rules Review of the Senate Commerce and Human Resources Committee and the House Business Committee

**FROM:** Eric Milstead, Principal Research Analyst

**DATE:** July 18, 2008

**SUBJECT:** Idaho Department of Insurance - IDAPA 18.01.09 (Docket No. 18-0109-0801)

The Idaho Department of Insurance has submitted notice of temporary and proposed rulemaking at IDAPA 18.01.09 -- Senior Consumer Protection in Annuity Transactions. The temporary and proposed rule amends an existing rule governing sales of annuity products to make the rule applicable to all consumers instead of just senior consumers. According to the Department, negotiated rulemaking was not conducted because the proposed rule is required by a change to the governing law that takes effect July 1, 2008.

The temporary and proposed rule implements the provisions of House Bill 411 which was passed by the 2008 Legislature. That bill amended section 41-1940, Idaho Code, to revise provisions relating to the sale of annuities and to provide that the consumer protections afforded in that section apply to all consumers of annuities, not just senior consumers.

The proposed rule appears to be within the authority granted to the Department under Sections 41-211 and 41-1940, Idaho Code.

cc: William W. Deal, Director, Idaho Dept. of Insurance  
Shad Priest

## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.09 - SENIOR CONSUMER PROTECTION IN ANNUITY TRANSACTIONS

DOCKET NO. 18-0109-0801

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 41-211 and 41-1940, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking amends an existing rule governing sales of annuity products to make the rule applicable to all consumers rather than just senior consumers. This change was made necessary by the enactment of House Bill 411, which amended the law upon which this rule is based to extend annuity sales protections to all consumers.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason: The rule is being amended to reflect a change to the governing law that takes effect July 1, 2008.

**FEE SUMMARY:** The following is a descriptive summary of the fee or charge being imposed or increased: The rule does not impose or increase a fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: No fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is required by a change to the governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest, 208-334-4214.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 27, 2008.

DATED this 26th day of June, 2008.

William W. Deal, Director  
Idaho Department of Insurance  
700 West State Street, 3<sup>rd</sup> Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0109-0801

18.01.09 - ~~SENIOR~~ CONSUMER PROTECTION IN ANNUITY TRANSACTIONS

(BREAK IN CONTINUITY OF SECTIONS)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 18.01.09 - ~~Senior~~ Consumer Protection in Annuity Transactions. (4-11-06)(7-1-08)T

~~02.~~ **Propose.** ~~The purpose of this rule is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.~~ (4-11-06)

032. **Scope.** This rule shall apply to any recommendation to purchase or exchange an annuity made to a ~~senior~~ consumer by a producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended. (4-11-06)(7-1-08)T

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

01. **Incorporated Documents.** IDAPA 18.01.09, "~~Senior~~ Consumer Protection in Annuity Transactions," adopts and incorporates by reference the following documents; (4-11-06)(7-1-08)T

a. United States Code, Title 29 - Labor, Chapter 18 - Employee Retirement and Income Security Act (ERISA). (4-11-06)

b. United States Code, Title 26 – Internal Revenue Code. (4-11-06)

c. NASD Manual Conduct Rules pertaining to suitability, specifically Rule 2310. Recommendations to Customers (Suitability) as amended. (4-11-06)

02. **Availability of Referenced Documents.** Printed copies of the documents described in Subsections 004.01.a. and 004.01.b. are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 as well as from the Department; the telephone number is (202) 512-1800, and electronic copies are available at <http://straylight.law.cornell.edu/uscode/>. Printed copies of the documents described in Subsection 004.01.c. are available from the Department and electronic copies are available from <http://nasd.complinet.com/nasd/display/index.html>. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

As used in this rule, unless the context requires otherwise, the following words shall have the following meanings: (4-11-06)

**01. Annuity.** A fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity. (4-11-06)

**02. Insurer.** Includes every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuity. (4-11-06)

**03. Producer.** A person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. (4-11-06)

**04. Recommendation.** Advice provided by a producer, or an insurer where no producer is involved, to an individual ~~senior~~ consumer that results in a purchase or exchange of an annuity in accordance with that advice. (4-11-06)(7-1-08)T

~~**05. Senior Consumer.** A person sixty five (65) years of age or older. In the event of a joint purchase by more than one party, the purchaser(s) will be considered to be a senior consumer if any of the parties is age sixty five (65) or older. (4-11-06)~~

**011. EXEMPTIONS.**

Unless otherwise specifically included, this rule shall not apply to recommendations of annuity purchases or exchanges involving (4-11-06)

**01. Direct Response Solicitations.** A response to a direct solicitation where there is no recommendation made based on information collected from the ~~senior~~ consumer pursuant to this rule; (4-11-06)(7-1-08)T

**02. Contracts Used to Fund.** (4-11-06)

**a.** An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA) as amended; (4-11-06)

**b.** A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer; (4-11-06)

**c.** A government or church plan defined in Section 414 of the IRC, as amended, 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 IRC, as amended; (4-11-06)

**d.** A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; (4-11-06)

**e.** Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; (4-11-06)

**f.** Formal prepaid funeral contracts; or (4-11-06)

**g.** Contracts used to fund funeral and related funeral expenses. (4-11-06)

**012. -- 014. (RESERVED).**

**015. DUTIES OF INSURERS AND OF PRODUCERS.**

**01. General Rule.** In recommending to a ~~senior~~ consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the ~~senior~~ consumer on the basis of the facts disclosed by the ~~senior~~ consumer as to his or her investments and other insurance products and as to his or her financial situation and needs. (4-11-06)(7-1-08)T

**02. Collection of Information.** Prior to a recommendation to a ~~senior~~ consumer of a purchase or exchange of an annuity, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning: ~~(4-11-06)(7-1-08)T~~

a. The ~~senior~~ consumer's financial status; ~~(4-11-06)(7-1-08)T~~

b. The ~~senior~~ consumer's tax status; ~~(4-11-06)(7-1-08)T~~

c. The ~~senior~~ consumer's investment objectives; and ~~(4-11-06)(7-1-08)T~~

d. Such other information used or considered to be reasonable by the producer, or the insurer where no producer is involved, in making recommendations to the ~~senior~~ consumer. ~~(4-11-06)(7-1-08)T~~

**03. Exceptions.** (4-11-06)

a. Except as provided under Subsection 015.03.b., neither a producer, nor an insurer where no producer is involved, shall have any obligation to a ~~senior~~ consumer under Subsection 015.01 related to any recommendation if a consumer: ~~(4-11-06)(7-1-08)T~~

i. Refuses to provide relevant information requested by the insurer or producer. (4-11-06)

ii. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or producer; or (4-11-06)

iii. Fails to provide complete or accurate information. (4-11-06)

b. If a producer, or the insurer where no producer is involved, sells an annuity to a ~~senior~~ consumer that is not the product recommended, the producer or insurer where no producer is involved, must: ~~(4-11-06)(7-1-08)T~~

i. Document that the recommendation was not accepted as presented; and (4-11-06)

ii. Obtain the signature of the ~~senior~~ consumer evidencing the rejection or modification of the recommendation. ~~(4-11-06)(7-1-08)T~~

**016. SUPERVISORY DUTIES OF INSURER.**

**01. Written Procedures.** An insurer shall either assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with Subsections 016.02 and 016.03, or shall establish and maintain such a system itself, which system shall include, but not be limited to: (4-11-06)

a. Maintaining written procedures; and (4-11-06)

b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule. (4-11-06)

**02. Third Party.** An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subsection 016.01 with respect to insurance producers under contract with or employed by the third party. (4-11-06)

**03. Third Party Contracting.** An insurer shall make reasonable inquiry to assure that the third party contracting under Subsection 016.02 is performing the functions required under Subsection 016.01 and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following: (4-11-06)

a. Annually obtaining a certification from a third party senior manager who has responsibility for the

delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and (4-11-06)

**b.** Based on reasonable selection criteria, periodically selecting third parties contracting under Subsection 016.02 for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances. (4-11-06)

**04. Complies with the Requirements to Supervise.** An insurer that contracts with a third party pursuant to Subsection 016.02 and that complies with the requirements to supervise in Subsection 016.03 shall have fulfilled its responsibilities under Subsection 016.01. (4-11-06)

**05. Insurer, General Agent or Independent Agency.** An insurer, general agent or independent agency is not required by Subsection 016.01 to: (4-11-06)

**a.** Review, or provide for review of, all producer solicited transactions; or (4-11-06)

**b.** Include in its system of supervision a producer's recommendations to ~~senior~~ consumers of products other than the annuities offered by the insurer, general agent or independent agency. ~~(4-11-06)~~(7-1-08)T

**06. Unable to Meet the Certification Criteria.** A general agent or independent agency contracting with an insurer pursuant to Subsection 016.02 shall promptly, when requested by the insurer pursuant to Subsection 016.03, give a certification as described in Subsection 016.03.a. or give a clear statement that it is unable to meet the certification criteria. (4-11-06)

**a.** No person may provide a certification under Subsection 016.03.a. unless: (4-11-06)

**i.** The person is a senior manager with responsibility for the delegated functions; and (4-11-06)

**ii.** The person has a reasonable basis for making the certification. (4-11-06)

**07. Director's Ability to Enforce the Provisions.** Compliance with the NASD Conduct Rules pertaining to suitability shall satisfy the requirements under Sections 015 and 016 for the recommendation of variable annuities. However, nothing in Section 016 shall limit the director's ability to enforce the provisions of this rule. (4-11-06)

**017. -- 020. (RESERVED).**

**021. RECORDKEEPING.**

**01. Maintaining Records.** The insurer, general agent, independent agency and producer shall maintain or be able to make available to the director records of the information collected from the ~~senior~~ consumer and other information used in making the recommendations that were the basis for insurance transactions, as long as the contract remains in force. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer, except as noted in Subsection 021.02. ~~(4-11-06)~~(7-1-08)T

**02. Termination.** If the producer terminates the appointment with the insurer or his license, the producer must remit copies of all records as described under Subsection 021.01 to the insurer within twenty-one (21) days of termination. (4-11-06)

**03. Form.** Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document. (4-11-06)