Annuity Suitability

Annuity Suitability Basics

CHAPTER 1: ANNUITY CONTRACTS AND CONSUMERS

Texas insurance agents are required to act in the best interest of the consumer when making a recommendation of an annuity. An agent is presumed to act in the best interest of the consumer if the agent satisfies the care, disclosure, conflict of interest, and documentation obligations described later. Insurers are required to establish and maintain a system to supervise those recommendations so that the insurance needs and financial objectives of the consumer as of the time of the transaction are effectively addressed.

General Provisions: Chapter 1114

The purpose of the chapter is to:

- Regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities
- Protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions
- Ensure that purchasers receive information with which a decision in the purchaser's best interest may be made
- Reduce the opportunity for misrepresentation and incomplete disclosure
- Establish penalties for failure to comply

Replacement of Certain Life and Annuity Policies; Requirements

Definitions in this chapter

Agent An individual who holds an insurance license and who sells, solicits, or negotiates life insurance or annuities.

Direct-response solicitation A solicitation made by a sponsoring or endorsing entity or individually; and solely through mails, telephone, the Internet, or other mass communication media.

Existing insurer The insurer, the policy or contract of which is or will be changed or affected by a replacement.

Existing policy or contract An individual life insurance policy or annuity contract that is in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

Financed purchase The purchase of a new policy that involves the actual or intended use of funds to pay all or part of any premium due on the new policy obtained by the withdrawal or surrender of an existing policy; or borrowing from values of an existing policy.

Illustration A presentation or depiction that includes nonguaranteed elements of a life insurance policy over a period of years.

Registered contract A variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

Replacement A transaction under which a new policy or contract is to be purchased, and for which it is known or should be known to the proposing agent or proposing insurer that, by reason of the transaction, an existing policy or contract has been or is to be:

- Lapsed, forfeited, surrendered or partially surrendered, assigned to a replacing insurer, or otherwise terminated;
- Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- Amended so as to effect a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- Reissued with any reduction in cash value; or
- Used in a financed purchase.

Replacing insurer The insurer that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

Sales material A sales illustration and any other written, printed, or electronically presented information created or completed or provided by the insurer or agent; and used in the presentation to the policy or contract owner relating to the policy or contract purchased.

Definition of Policy Summary

This term ‘Policy Summary’ has the following meanings under 28 TAC Chapter 1114.

For a policy or contract other than a universal life insurance policy, "policy summary" means a written statement regarding the policy or contract that at minimum contains, to the extent applicable, the following information:

- the current death benefit;
- the annual contract premium;
- the current cash surrender value;
- the current dividend;
- the application of the current dividend; and
- the amount of any outstanding loan.

For a universal life insurance policy, "policy summary" means a written statement that contains, at minimum, the following information:

- the beginning and ending date of the current reporting period;
- the policy value at the end of the previous reporting period and at the end of the current reporting period;
- the total amounts that have been credited or debited to the policy value during the current reporting period, identifying each by type, including interest, mortality, expense, and riders;
- the current death benefit at the end of the current reporting period on each life covered by the policy;
- the net cash surrender value of the policy as of the end of the current reporting period; and
- the amount of any outstanding loans as of the end of the current reporting period.

Applicability and Exemptions

Except as otherwise specifically provided by 28 TAC 1114, this chapter does not apply to transactions involving:

- credit life insurance;
- group life insurance or group annuities for which there is no direct solicitation of individuals by an agent;
- group life insurance and annuities used to fund prepaid funeral benefits contracts

It does not apply to an application to:

- exercise a contractual change or a conversion privilege made to the insurer that issued the existing policy or contract;
- replace an existing policy or contract by the insurer that issued the existing policy or contract under a program filed with and approved by the commissioner; or
- exercise a term conversion privilege among corporate affiliates;
- life insurance proposed to replace life insurance under a binding or conditional receipt issued by the same insurer;

Nor does it apply to a policy or contract used to fund:

- employee pension benefit plans or employee welfare benefit plans covered by ERISA
- plans described by Section 401(a), 401(k), or 403(b) established or maintained by an employer government or church plan
- employer/sponsor nonqualified deferred compensation arrangements
- new coverage provided under a life insurance policy or contract if the cost is borne wholly by the insured’s employer or association
- existing nonconvertible term life insurance policy scheduled to expire in five years or less and that cannot be renewed
- immediate annuities purchased with proceeds from an existing contract
- structured settlements

The regulations apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis. That is if the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance agent for the purchase of a contract or policy. Group life insurance or group annuity certificates marketed through direct response solicitation are subject to regulation. Immediate annuities purchased with proceeds from an existing policy are not exempted from these requirements.

The term "direct solicitation" does not include a group meeting held by an insurance agent solely for the purpose of educating or enrolling individuals or initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual.

Financed Purchase

If a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy that is owned by the same policyholder and is issued by the same insurer not earlier than four months before the effective date of the new policy or 13 months after the effective date of the new policy, it is deemed prima

facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values.

Consumer Notice Documents

See the section addressing 28 TAC Ch 3, NN for required consumer notices.

Duties of Insurers and Agents

Agents who initiate an application for a life insurance policy or annuity contract will submit to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing policies or contracts. If the applicant states that the applicant does not have existing policies or contracts, the agent's duties, after compliance with regulations regarding replacement are complete. If the applicant states that the applicant does have existing policies or contracts, the agent presents and reads the notice about replacements to the applicant.

Approved Notice Form

The notice required section must be given in an approved form. The notice is to be signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud. The notice must be presented and read no later than at the time of taking the application. The agent is to leave the notice with the applicant.

If the notice is presented to the applicant by electronic means and signed electronically, in which case the insurer mails the applicant a copy of the notice not later than the third business day after the date the application is received by the insurer. The notice must list all life insurance policies or annuities proposed to be replaced, properly identified by the name of the insurer, the name of the insured or annuitant, and the policy or contract number if available, and include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, must be listed.

In connection with a replacement transaction, the agent must leave with the applicant all sales material. Electronically presented sales material must be provided to the policy or contract owner in printed form not later than the date that the policy or contract is delivered. If doing a policy replacement, the agent submits the following to the insurer;

- copy of each required document
- statement identifying any preprinted or electronically presented insurer-approved sales materials used
- copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased

Insurer Duties

Insurers are to maintain a system of supervision and control to ensure compliance with the annuity sales requirements. Under the system, the insurer must, at minimum:

- inform its agents of the requirements of the requirements of Chapter 1114 and incorporate the requirements into all relevant agent training manuals prepared by the insurer

- provide each agent a written statement of the insurer's position with respect to the acceptability of replacements and provide guidance to the agent as to the appropriateness of these transactions;
- review the appropriateness of each replacement transaction that the agent does not indicate is in accord with the regulations.
- implement procedures to confirm that sales/replacement requirements are met
- implement procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer but that have not been reported as such.

Compliance steps can include systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring. Each insurer must have the capacity to monitor each agent's life insurance policy and annuity contract replacements for that insurer. The insurer is to maintain records regarding the monitoring and must produce records for the DOI on request. The capacity to monitor the aspects of annuity sales must include the ability to produce records for:

- each agent's life insurance replacements, including financed purchases, as a percentage of the agent's total annual sales for life insurance;
- the number of lapses of policies by the agent as a percentage of the agent's total annual sales for life insurance;
- each agent's annuity contract replacements as a percentage of the agent's total annual annuity contract sales
- the number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system
- replacements, indexed by replacing agent and existing insurer.

Each insurer will include, with or as a part of each application for life insurance or an annuity, a signed statement by both the applicant and the agent as to whether the applicant has existing policies or contracts. Each insurer is to require, with each application for life insurance or an annuity that indicates an existing policy or contract, a completed notice regarding replacements. If the applicant has existing policies or contracts, each insurer must be able to produce, for at least five years after the date of termination or expiration of the proposed policy or contract, copies of any sales material required to be retained along with, the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the agent's and applicant's signed statements with respect to financing and replacement. The insurer has to ascertain that the sales material and illustrations required by Section 1114.051(g) meet the requirements of this chapter and are complete and accurate for the proposed policy or contract. If an application does not meet requirements, the insurer notifies the agent and applicant and fulfills the outstanding requirements. The insurer is to maintain records required for annuity sales/replacement in paper, photographic, micro process, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Duties of Replacing Insurers that Use Agents

If a transaction involves a policy replacement as defined above, these steps must be followed;

- The replacing insurer verifies the required complying forms are received
- The replacing insurer will notify any existing insurer that may be affected by the proposed replacement not later than the fifth business day after the date of receipt of a

completed application indicating replacement; or the date that replacement is identified if it is not indicated on the application; and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract to the existing insurer not later than the fifth business day after the date of a request from the existing insurer.

- The replacing insurer must be able to produce copies of the notification regarding replacement required, indexed by agent, until the later of the fifth anniversary of the date of the notification; or the date of the replacing insurer's next regular examination by the insurance regulatory authority.
- The replacing insurer provides to the policy or contract owner notice of the owner's right to return the policy or contract within 30 days of the delivery of the policy or contract and to receive an unconditional full refund of all premiums or considerations paid on the policy or contract, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract. The notice may be combined with other notices required under this chapter in accordance with rules of the commissioner.

In transactions in which the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control, the replacing insurer allows credit for the period that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract. If an insurer prohibits the use of sales material other than that approved by the insurer, as an alternative to these requirements, the insurer must:

- require with each application a statement signed by the agent that represents that the agent used only insurer-approved sales material and states that copies of all sales material were left with the applicant not later than the 10th day after the date of issuance of the policy or contract
- notify the applicant by sending a letter, or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the agent has represented that copies of all sales material have been left with the applicant in accordance with regulations
- provide the applicant with a toll-free telephone number to contact the insurer's personnel involved in the compliance function if copies of all sales material have not been
- left with the applicant
- stress the importance of retaining copies of the sales material for future reference
- be able to produce a copy of the letter or other verification in the policy file until the fifth anniversary of the date of termination or expiration of the policy or contract.

Duties of Existing Insurer

For transactions involving a replacement the existing insurer is to retain and be able to produce all replacement notifications received, indexed by the replacing insurer, until the latest of the fifth anniversary of the date of receipt of the notification or the date of conclusion of the next regular examination conducted by the regulator. The existing

insurer must send a letter to the policy or contract owner regarding the owner's right to receive information regarding the existing policy or contract values. The letter must include, if available, an in force illustration or, if an in force illustration cannot be produced not later than the fifth business day after the date of receipt of a notice that an existing policy or contract is being replaced, a policy summary. The information must be provided not later than the fifth business day after the date of receipt of the request from the policy or contract owner. On receipt of a request to borrow, surrender, or withdraw any policy values, the existing insurer will send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount, or surrender value of the policy from which the values are released. The notice must be sent separately from the payment if the payment is sent to any person other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

Duties of Insurers Regarding Direct Response

In the case of an application initiated as a result of a direct response solicitation, the insurer will require submission of a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. The statement may be included with, or submitted as part of, each completed application for a policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer is obligated to send the applicant, with the policy or contract, a notice, in a form adopted or approved by the commissioner, regarding replacement. If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer is to provide to the applicant or prospective applicant, with the policy or contract, a notice adopted or approved by the commissioner. Other specific regulations may apply.

In a the situation above, the insurer may use a notice that deletes references to the agent, including the agent's signature, and references not applicable to the product being sold or replaced, without having to obtain prior approval of the notice from the commissioner. The insurer's obligation to obtain the applicant's signature is satisfied if the insurer can demonstrate that the insurer has made a diligent effort to secure a signed copy of the notice. The requirement to make a diligent effort is deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice.

Registered Contracts

A registered contract is exempt from the requirements of 28 TAC 1114.053(c), and .054(c) with respect to the provision of illustrations or policy summaries, but must provide instead premium or contract contribution amounts and identification of the appropriate prospectus or offering circular.

Enforcement

Unfair Method of Competition, Sanctions and Penalties

Failure of an insurer or agent to comply with the appropriate rules and regulations only invites trouble. Here are some of the activities that are considered unacceptable;

- deceptive or misleading information set forth in any sales material;
- failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- intentionally recording an answer incorrectly;
- advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer
- advising a policy or contract owner to contact the insurer directly in such a way as to attempt to obscure the identity of the replacing agent or insurer.

A policy or contract owner has the right to replace an existing life insurance policy or annuity contract after indicating in or as a part of applications for new coverage that replacement is not the intention. However, patterns of that action by policy or contract owners of the same agent is be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the identified transactions, and those patterns of action will be deemed prima facie evidence of the agent's intent to violate the rules. If it is determined that the requirements discussed here have not been met, the replacing insurer is to provide the policy owner an in force illustration. If an in force illustration is not available, a policy summary for the replacement policy or an available disclosure document for the replacement contract; and the appropriate notice regarding replacements.

Additional Sanctions

In addition to sanctions and penalties under TIC 541 as provided by 28 TAC Sec. 1114.101, an insurer or agent that violates this chapter is subject to sanctions which may include:

- the revocation or suspension of the agent's license or the insurer's certificate of authority
- administrative penalties
- forfeiture of any commissions or other compensation paid to an agent as a result of the transaction in connection with which the violations occurred.

If it is determined that the violations of this chapter were material to the sale, the insurer may be required to make restitution, restore policy or contract values; and pay interest at the rate set by Sec 84.050 on the amount refunded in cash.

General Provisions: Chapter 1115

The purpose of this chapter of the Texas Insurance Code is to require an agent to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise those recommendations so that the insurance needs and financial objectives of the consumer as of the time of the transaction are effectively addressed.

Chapter 1115 of the Texas Insurance Code incorporates a "best interest" standard of care for annuities similar to the best interest standard of care for securities adopted by the SEC in 2020. This will harmonize the standard of care for annuities across regulatory platforms.

Suitability of Certain Annuity Transactions

Definitions in this chapter

Agent This means an individual who holds a license and who sells, solicits, or negotiates insurance or annuity contracts.

Annuity This means an annuity that is an insurance product under the laws of this state that is individually solicited, whether classified as an individual annuity or group annuity.

Cash compensation This means a discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent from an insurer, intermediary, or consumer in connection with the recommendation or sale of an annuity.

Consumer profile information This means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including the following:

- age
- annual income
- existing assets and financial products, including investment, annuity, and insurance holdings
- financial situation and needs, including debts and other obligations
- financial experience
- financial objectives
- financial resources used to fund the annuity
- financial time horizon
- insurance needs
- intended use of the annuity
- liquid net worth
- liquidity needs
- risk tolerance, including willingness to accept non-guaranteed elements in the annuity
- tax status

Insurer This means an insurance company authorized to engage in the business of life insurance and annuities in this state, and includes fraternal benefit societies.

Intermediary This means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents.

Material conflict of interest This means a financial interest of an agent in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash or noncash compensation paid to an agent.

Noncash compensation This means any form of compensation that is not cash compensation, including health insurance, office rent, office support, and retirement benefits.

Non-guaranteed element This means a premium, credited interest rate, including any bonus, benefit, value, dividend, non-interest based credit, or charge, or an element of a formula used to determine any of those elements, that is determined at the discretion of the insurer and is not guaranteed at issue. The term includes an element that is calculated using an element that is determined at the discretion of the insurer and is not guaranteed at issue.

Recommendation This means advice provided by an agent or insurer to an individual consumer that results in a purchase or exchange of an annuity made in accordance with that advice. The term does not include a general communication to the public; any

generalized customer service assistance or administrative support, any general educational information or tools, a prospectus, or any other product or sales material.
Replacement This means a transaction in which a new annuity is to be purchased and the proposing agent, or the proposing insurer regardless of whether an agent is involved, knows or should know that, by reason of the transaction, an existing annuity or other insurance policy has been or is to be:

- Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
- Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values
- Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid
- Reissued with any reduction in cash value
- Used in a financed purchase

Applicability, Exemptions

This chapter applies to any sale of an annuity. Unless otherwise specifically included, this chapter does not apply to transactions involving:

- direct response solicitations if there is no recommendation based on information collected from the consumer under this chapter
- contracts used to fund employee pension benefit plans or employee covered by ERISA
- a Section 401 or 408 plan
- a Section 457 government or church plan
- a nonqualified deferred compensation arrangement
- settlements of or assumptions of liabilities for personal injury/dispute or claim resolution
- prepaid funeral benefits contracts

These regulations are not to be construed to create or imply a private cause of action against an agent or insurer or to subject an agent or insurer to civil liability for a violation of this chapter or a rule adopted under this chapter or a standard governing the conduct of a fiduciary or a fiduciary relationship. The commissioner may adopt reasonable rules in the manner prescribed by Texas Insurance Code and Texas Administrative Code

Agents Exercising Material Control

Certain regulations apply to agents who exercise material control or influence in making a recommendation or sale; and receive direct compensation as a result of the recommendation or sale of an annuity. This is regardless of whether the agent has direct contact with the consumer. Activities that do not constitute material control or influence include providing or delivering marketing or educational materials, product wholesaling or other back office product support, general supervision of an agent, and similar activities (TIC 1115.0505).
An agent does not have an obligation to a consumer if:

- The agent does not make a recommendation
- The agent makes a recommendation based on materially inaccurate information provided by the consumer
- The consumer refuses to provide consumer profile information

- The consumer enters into an annuity transaction that is not based on the recommendation from the agent or the insurer.

Consider Whole Transaction

In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, including whether the consumer will incur a surrender charge, be subjected 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. The agent must also consider if the replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and if the consumer has had an annuity exchange or replacement in the preceding 60 months. This section applies to an annuity as a whole, including:

- Underlying subaccounts to which money is allocated at the time of the purchase or exchange of an annuity
- Any riders and similar product enhancements.

An agent shall be held to standards applicable to an agent with similar authority and licensure. Regulations do not create a fiduciary obligation or relationship and only creates a regulatory obligation.

Insurer Obligations

An insurer's issuance of an annuity must be reasonable under the circumstances known to the insurer at the time the annuity is issued. If there is no agent involved in an annuity transaction, the obligations described in this subchapter apply to the insurer that recommends or sells the annuity in the same way those obligations would apply to an agent. Agents need a life license as described in TIC Ch 4054 to sell Annuities.

Act in Best Interest

When making a recommendation of an annuity, an agent shall act in the best interest of the consumer under the circumstances known to the agent at the time the recommendation is made, without placing the agent 's or the insurer 's financial interest ahead of the consumer 's interest. An agent is presumed to act in the best interest of the consumer if the agent satisfies the care, disclosure, conflict of interest, and documentation obligations described by this subchapter.

Care Obligation

In making a recommendation, an agent shall exercise reasonable diligence, care, and skill to:

- Obtain consumer profile information from the consumer before making the recommendation of an annuity
- Know the consumer 's financial situation, insurance needs, and financial objectives
- Understand the available recommendation options available to the agent;
- Consider the types of products the agent is authorized and licensed to recommend or sell that address the consumer 's financial situation, insurance needs, and financial objectives;

- Have a reasonable basis to believe the recommendation addresses the consumer ’s financial situation, insurance needs, and financial objectives over the life of the product, in light of the consumer profile information;
- Have a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, a death or living benefit, or other insurance-related feature
- Communicate the basis of the recommendation.

These obligations do not require analysis or consideration of a product outside the authority and license of the agent; analysis or consideration of a product or strategy that is an alternative to an annuity, recommendation of the annuity with the lowest one-time or multiple occurrence compensation structure; or ongoing monitoring of the consumer’s financial situation.

The agent shall consider consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features in determining whether an annuity effectively addresses the consumer ’s financial situation, insurance needs, and financial objectives. The agent may place varying levels of importance on each of those factors based on the facts and circumstances of a particular case, but may not consider one factor in isolation.

Disclosure Obligation

Before the recommendation or sale of an annuity, an agent shall provide a disclosure to the consumer on a form prescribed by the commissioner by rule. The prescribed form must be substantially similar to the National Association of Insurance Commissioners Insurance Agent Disclosure for Annuities form. The form must include:

- A description of the scope and terms of the agent’s relationship with the consumer and role in the transaction
- An affirmative statement on whether the agent is licensed and authorized to sell fixed annuities, fixed indexed annuities, variable annuities, life insurance, mutual funds, stocks and bonds, or certificates of deposit.

Agents must also disclose the insurers for whom the agent is authorized, contracted or appointed, or otherwise able to sell insurance products. Agents should provide description of the sources and types of cash compensation and noncash compensation to be received by the agent, including whether the agent is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other agent or by fee as a result of a contract for advice or consulting services.

On request of the consumer or the consumer’s designated representative, an agent shall disclose a reasonable estimate of the amount of cash compensation to be received by the agent, which may be stated as a range of amounts or percentages; and whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of occurrence, which may be stated as a range of amounts or percentages.

Prior to or at the time of the recommendation or sale of an annuity, the agent must have a reasonable basis to believe the consumer has been informed of the features of the annuity, including:

- The potential surrender period and surrender charge
- The potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity
- Mortality and expense fees
- Investment advisory fees
- Annual fees
- Potential charges for and features of riders or other options of the annuity
- Limitations on interest returns
- Potential changes in non-guaranteed elements of the annuity
- Insurance and investment components; and
- Market risk

Conflict of Interest Obligation

An agent shall take reasonable steps to discover a material conflict of interest, including a material conflict of interest related to an ownership interest. Agents shall identify and avoid a material conflict of interest; or reasonably manage and disclose the conflict.

Documentation Obligation

At the time of the recommendation or sale, an agent shall make a written record of the recommendation and the basis for the recommendation. If applicable, obtain a statement signed by the consumer on a form substantially similar to the NAIC Consumer Refusal to Provide Information form documenting client's refusal to provide consumer profile information and consumer’s understanding of the ramifications of failing to provide consumer profile information or providing insufficient consumer profile information.

If a consumer decides to enter into an annuity transaction that is not based on the agent’s recommendation, obtain a signed Consumer Decision to Purchase an Annuity Not Based on a Recommendation acknowledging that the annuity transaction is not recommended.

Supervision System

An insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the consumer’s financial situation, insurance needs, and financial objectives based on the consumer’s consumer profile information. Insurer shall establish and maintain a supervision system that is reasonably designed to achieve compliance with these regulations including:

- Establishing and maintaining reasonable procedures to inform the insurer’s agents of the regulatory requirements into relevant agent training manuals
- Establishing and maintaining standards for agent product training and establishing and maintaining reasonable procedures to maintain regulatory compliance
- Providing product-specific training and training materials that explain all material features of the insurer’s annuity products to the insurer’s agents.

- Establishing and maintaining procedures to review each recommendation electronically, physically, or otherwise before the issuance of an annuity. Such procedures must be designed to ensure that there is a reasonable basis to determine that the recommended annuity would effectively address the consumer's financial situation, insurance needs, and financial objectives. The review procedures may include the application of a screening system to identify selected transactions for additional review and be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- Establishing and maintaining reasonable procedures, such as confirmation of consumer profile information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations, and programs of internal monitoring, to detect recommendations that are not in compliance. Procedures may include applying sampling procedures or confirming consumer profile information after the issuance or delivery of the annuity.
- Establishing and maintaining reasonable procedures to assess, before or on issuance or delivery of an annuity, whether an agent has provided to the consumer the information required to be provided under the Texas Insurance Code.
- Establishing and maintaining reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.
- Establishing and maintaining reasonable procedures to identify and eliminate sales contests, sales quotas, bonuses, or noncash compensation that are based on the sale of specific annuities within a limited period of time.
- Annually providing a written report to the insurer's senior management, including to the senior manager responsible for audit functions that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and any corrective action taken or recommended.

(B-1) Regulation does not prohibit the receipt by employees of health insurance, office rent, office support, retirement benefits, or other employee benefits so long as those benefits are not based on the volume of sales of a specific annuity within a limited period of time. Annuity regulation does not prohibit an insurer from contracting out the functions just reviewed. However, it is the insurer who remains responsible for taking appropriate corrective actions and it is the insurer who may be subject to sanctions and penalties under Sec. 1115.102. An insurer's supervision system must include the supervision of contractual performance at minimum including;

- Annually obtaining certification that complies from a senior manager who represents that the contracted function is properly performed.
- Monitoring and conducting audits to ensure that the contracted function is properly performed.

An insurer is not required by this section to include in the supervision system-

- An agent 's recommendations to consumers of products other than the annuities offered by the insurer
- Consideration/comparison to options available to the agent or compensation relating to those options other than annuities or other products offered by the insurer.

An agent's or insurer's recommendation must be reasonable under all the circumstances actually known to the agent or insurer at the time of the recommendation (TIC Ch 1115.0507).

Compliance System

It is the duty of each insurer to operate a system that is reasonably designed to achieve compliance regulatory goals; to supervise recommendations. An insurer may comply with DOI requirements by establishing and maintaining the insurer's own compliance system. Each agent and independent agency is to adopt an insurer's compliance system or establish and maintain such a system. A compliance system must include:

- Maintenance of written procedures
- Periodic reviews of the insurer's or agent's records in a manner reasonably designed to assist in detecting and preventing violations of this chapter.

An agent or insurer may contract with a third party, including an agent or independent agency, to establish and maintain a compliance system with respect to agents under contract with or employed by the third party. The agent or insurer must make reasonable inquiries sufficient to ensure that the third party is following compliance procedures, and will take any action reasonable under the circumstances to enforce the contractual obligation to perform those functions. An agent or insurer may comply with the obligation to make reasonable inquiries by:

- Annually obtaining certification from a senior manager of the third party that the third party is performing the required functions
- Periodically selecting third parties, based on reasonable selection criteria, for a review to determine whether the third parties are performing the required functions.

An agent or insurer need to adopt procedures for conducting compliance reviews that are reasonable under the circumstances. An insurer that contracts with a third party and that complies with the requirements to supervise is deemed to have complied with the insurer's responsibilities mentioned above.

An insurer, agent, or independent agency is not required by this section to:

- Review, or provide for review of, all agent-solicited transactions; or
- Include in the compliance system an agent's recommendations to consumers of products other than the annuities offered by the insurer, agent, or independent agency.

Certification Requirements

On request by an insurer, an agent or independent agency that contracts with an insurer in operation of a compliance system must promptly obtain a certification as described above in 'Compliance System' or give a clear statement that it is unable to meet the certification criteria. A person may not provide a certification unless the person is a senior manager with responsibility for the delegated functions and has a reasonable basis for making the certification.

Safe Harbor

Compliance with Comparable Standards

Recommendations and sales of annuities made in compliance with comparable standards satisfy the requirements of this chapter. Compliance with the conduct rules of the National Association of Securities Dealers relating to suitability, or the rules of another national organization recognized by the Texas DOI satisfies the requirements

for the recommendation of variable annuities. This section applies to recommendations and sales of annuities made by a financial professional in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. The ability of the Insurance Commissioner to enforce or investigate is not affected by anything in this chapter. This section does not limit the insurer's obligation to establish and maintain a supervision system designed to achieve compliance with these regulatory goals. Safe harbor guidelines only apply if the insurer:

- Using information collected in the normal course of the insurer's business, monitors the relevant conduct of the financial professional or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws
- Provides to the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist the entity in maintaining the entity's supervision system.

For current purposes, "financial professional" means an agent that is regulated and acting as:

- A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer.
- An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser.
- A plan fiduciary under the aegis of ERISA or applicable sections of the IRC.

For purposes of this section, "comparable standards" means the following:

- For a broker-dealer or a registered representative of a broker-dealer, applicable rules of the Financial Industry Regulatory Authority (FINRA) and the United States Securities and Exchange Commission pertaining to best interest obligations and supervision of annuity recommendations and sales, including Regulation Best Interest (17 C.F.R. Section 240.15l-1), including subsequent amendments or successor regulations;
- For an investment adviser registered under federal or state securities laws or an investment adviser representative, the fiduciary duties and all other requirements imposed on those investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities law or regulations.
- A plan fiduciary under the aegis of ERISA or applicable sections of the IRC.

Recordkeeping Requirements

1115.055 Each agent, general agent, independent agency, and insurer is to maintain, or otherwise be able to make available to the commissioner, records of the information collected from the consumer disclosures made to the consumer, including summaries of oral disclosures, and other information used in making a recommendation that was the basis for an insurance transaction subject to these regulations until the fifth anniversary of the date on which the transaction is completed by the insurer. An insurer may, but is not required to, maintain documentation on behalf of an agent. Records may be

maintained in paper, photographic, microprocessor, magnetic, mechanical, or electronic media by any process that accurately reproduces the actual document.

Agent Training Requirements

An agent may not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided, product-specific training standards and materials to comply with this subsection. An agent who engages in the sale of annuity products must complete a one-time four-credit training course approved by the department and provided by a continuing education provider.

The training required by the paragraph above must be of a length sufficient to qualify for at least four continuing education credits, as determined by the commissioner. The required training may be used to satisfy the licensee's continuing education requirements. The hours are not in addition to the continuing education requirements.

The required training must include information on the following topics:

- the types of annuities and various classifications of annuities
- identification of the parties to an annuity
- how product-specific annuity features affect consumers
- the application of income taxation of qualified and nonqualified annuities
- the primary uses of annuities
- appropriate standard of conduct sales practices, replacement, and disclosure requirements.

A provider of a course intended to comply with Agent Training mandates must cover all topics just mentioned above and may not present any marketing information, 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 topics.

A provider of an annuity training course intended to comply with these requirements must register and comply with the rules and guidelines applicable to agent continuing education courses. The course may be classroom or self-study and must meet reporting requirements. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this section is considered to satisfy the training requirements A course that is substantially similar to a course required by the regulations satisfies the requirement.

An insurer must verify that an agent has completed the required annuity training course before allowing the agent to sell annuities. An insurer may satisfy the insurer's responsibility laid out here by-

- Obtaining a certificate of completion of the training course or obtaining an appropriate report provided by the department.
- Using a department-sponsored database or vendor.
- Using a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Enforcement

Mitigation An insurer is responsible for compliance with regulations that impact annuities. If a violation occurs because of the action or inaction of the insurer or the insurer's agent, the Department may order:

- an insurer to take reasonable appropriate corrective action for any consumer harmed by a failure to comply with this chapter by the insurer, the insurer's agent, or an entity contracted to perform the insurer's supervisory duties
- an agent to take reasonably appropriate corrective action for any consumer harmed by the agent's violation of these rules and regulations
- a managing general agent or independent agency that employs or contracts with an agent to sell, or solicit the sale of, annuities to consumers to take reasonably appropriate
- corrective action for any consumer harmed by the agent's violations

Sanctions The Department may impose sanctions as provided by Chapter 82 for violations. The commissioner may reduce or eliminate a sanction for violation of these regulations otherwise applicable if corrective action for the consumer was taken promptly by the agent or insurer after discovery of a violation (TIC 1115.101)...

Requirements of 28 TAC Ch 3, NN

The information in this section is from the Texas Administrative Code. 28 TAC Ch 3 Sub NN and consists of the following;

Purpose
Definitions
Consumer Notice Content and Format Requirements
Consumer Notice Regarding Replacement for Insurers Using Agents
Direct Response Consumer Notices
Filing Procedures for Substantially Similar Consumer Notices

Purpose The purpose of this subchapter is to specify the content and procedural requirements for consumer notices for life insurance policy and annuity contract replacements as required by the Insurance Code §1114.006.

Definitions When used in this subchapter, the words "agent" and "producer" means, unless the context clearly indicates otherwise, an individual who holds a license under Insurance Code Chapter 4054 and who sells, solicits, or negotiates life insurance or annuities in this state.

Consumer Notice Content and Format Requirements

- The text contained in Figure: 28 TAC §3.9504(b), Figure: 28 TAC §3.9505(1) and Figure: 28 TAC §3.9505(2) must be in at least 10 point type and presented in the same order as indicated in each figure and without any change to the specified text, including bolding effects, except as provided in subsections (b), (c), and (d) of this section.
- Pursuant to §3.9506 of this subchapter (relating to Filing Procedures for Substantially Similar Consumer Notices), in lieu of using the notices contained in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1), an insurer may file a

notice with the department that is substantially similar to the text contained in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) for review and approval by the commissioner. The commissioner will then approve the notice if, in the commissioner's opinion, the notice protects the rights and interests of applicants to at least the same extent as the notices adopted in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). An insurer required to send the notice specified in Figure: 28 TAC §3.9505(2) may not file a notice that is substantially similar to that figure for review and approval by the commissioner.

- Commissioner approval of a notice is not required if a notice promulgated or approved under this subchapter is used and amendments to that notice are limited to the omission of references not applicable to the product being sold or replaced. For purposes of this subchapter, a reference in any notice required under this subchapter to a product that is being sold or replaced is applicable if the reference could be applicable under any possible circumstances and therefore may not be omitted from the required notice.
- An insurer may add a company name and identifying form number to notices specified under this subchapter without obtaining commissioner approval.
- The promulgated forms specified in this subchapter are available upon request from the Life, Health & Licensing Division, MC 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9107 or 333 Guadalupe, Austin, Texas 78701, or by accessing the department website at www.tdi.state.tx.us.

Consumer Notice Regarding Replacement for Insurers Using Agents

(a) An agent who initiates an application for a life insurance policy or annuity contract submits to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing life insurance policies or annuity contracts.

(b) If the applicant states that the applicant does have existing policies or contracts, the agent is required to present and read to the applicant, not later than at the time of taking the application, a notice regarding replacement that contains the text contained in Figure: 28 TAC §3.9504(b), or substantially similar notice filed with the department and approved under this subchapter. The notice is signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud, in which case the agent is not required to read the notice aloud.

Attached Graphic Example

Figure: 28 TAC §3.9504(b)

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the producer, if there is one and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

If you answered “yes” to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY#	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must

be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because

_____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____
Applicant's Signature and Printed Name Date

_____ _____
Agent's Signature and Printed Name Date

I do not want this notice read aloud to me. ____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one.

You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older--are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy?
On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?

Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:
How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:
Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:
What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable “grandfathered” treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new Company compare with your existing company?

Direct Response Consumer Notices
In the case of a life insurance or annuity application initiated as a result of a direct response solicitation, the insurer inquires whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing life insurance policy or annuity contract. The inquiry may be included with, or submitted as a part of, each completed application for such policy or contract.
(1) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer must send a notice that contains the text in Figure: 28 TAC §3.9505(1), or a substantially similar notice filed with the department and approved under this subchapter.

Figure: 28 TAC §3.9505(1)

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?
   ____ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract?
   ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration,

policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.
I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____
Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older--are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy?
On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will Incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY:
If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:
How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:
Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable “grandfathered” treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

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(2) If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer must send the applicant, with the policy or contract, a new policy or contract notice that contains the statements in Figure: 28 TAC §3.9505(2).
Attached Graphic example

Figure: 28 TAC §3.9505(2)

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one--or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract’s benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

Filing Procedures for Substantially Similar Consumer Notices Effective February 1, 2008, an insurer subject to Insurance Code Chapter 1114 using agents must either use the text of the notice contained in Figure: 28 TAC §3.9504(b), which is not subject to filing and approval, or a consumer notice substantially similar to the text contained in Figure: 28 TAC §3.9504(b) which has filed under this section and approved. In the case of an applicant responding to a direct response solicitation, an insurer subject to Insurance Code Chapter 1114 must either use the text contained in Figure: 28 TAC §3.9505(1), which is not subject to filing and approval, or a consumer notice substantially similar to the text contained in Figure: 28 TAC §3.9505(1) which has been filed under this section and approved.

Prohibitions Specified in TIC 541

An insurer or agent must not misrepresent the terms of a policy issued by the insurer or promised to be issued, the benefits or privileges agreed to in the policy, or the future dividends payable under the policy. Insurers or their representatives cannot make any misrepresentation as an inducement to purchase a policy. Agents must not use falsehood or misrepresentation to persuade a policyholder to lapse, forfeit or surrender his or her insurance. Conversely, insurers and their agents may not use any representation or comparison of insurers or policies to an insured which is misleading, for the purpose of inducing or tending to induce him to lapse, forfeit, change or surrender his insurance, whether on a temporary or permanent plan.

The following information comes from Texas Insurance Code; TIC Sec 541.051- .061, “Subchapter B Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined”.

Misrepresentation Regarding Policy or Insurer

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to:

- make, issue, or circulate or cause to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued the terms of the policy, the benefits or advantages promised by the policy, or the dividends or share of surplus to be received on the policy
- make a false or misleading statement regarding the dividends or share of surplus previously paid on a similar policy
- make a misleading representation or misrepresentation regarding the financial condition of an insurer or the legal reserve system on which a life insurer operates
- use a name or title of a policy or class of policies that misrepresents the true nature of the policy or class of policies
- make a misrepresentation to a policyholder insured by any insurer for the purpose of inducing or that tends to induce the policyholder to allow an existing policy to lapse or to forfeit or surrender the policy.

Information, Defamation, Intimidation

False Information and Advertising It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, announcement, or statement containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the business of insurance or a person in the conduct of the person’s insurance business. These prohibitions apply to any advertisement, announcement, or statement made, published, disseminated, circulated, or placed before the public a newspaper, magazine, or other publication; in a notice, circular, pamphlet, letter, or poster; over a radio or television station; through the Internet; or in any other manner.

Defamation of Insurer It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to directly or indirectly make, publish, disseminate, or circulate or to aid, abet, or encourage the making, publication, dissemination, or circulation of a statement that is false, maliciously critical of, or

derogatory to the financial condition of an insurer and is calculated to injure a person engaged in the business of insurance. This rule applies to any oral or written statement, including a statement in any pamphlet, circular, article, or literature.

Boycott, Coercion or Intimidation It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to commit through concerted action or to enter into an agreement to commit an act of boycott, coercion, or intimidation that results in or tends to result in the unreasonable restraint of or a monopoly in the business of insurance.

False Financial Statement

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to, with intent to deceive:

- file with a supervisory or other public official a false statement of financial condition of an insurer
- make, publish, disseminate, circulate, deliver to any person, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, delivered to any person, or placed before the public a false statement of financial condition of an insurer.

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make a false entry in an insurer's book, report, or statement or willfully omit to make a true entry of a material fact relating to the insurer's business in the insurer's book, report, or statement with intent to deceive:

- an agent or examiner lawfully appointed to examine the insurer's condition or affairs
- a public official to whom the insurer is required by law to report or who has authority by law to examine the insurer's condition or affairs.

Prohibited Rebates and Inducements

Except as otherwise expressly provided by law, it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to knowingly permit the making of, offer to make, or make a life insurance contract, life annuity contract, or accident and health insurance contract or an agreement regarding the contract, other than as plainly expressed in the issued contract, or directly or indirectly pay, give, or allow or offer to pay, give, or allow as inducement to enter into a life insurance contract, life annuity contract, or accident and health insurance contract a rebate of premiums payable on the contract, a special favor or advantage in the dividends or other benefits of the contract, or a valuable consideration or inducement not specified in the contract, or give, sell, or purchase or offer to give, sell, or purchase in connection with a life insurance, life annuity, or accident and health insurance contract or as inducement to enter into the contract stocks, bonds, or other securities of an insurer or other corporation, association, or partnership, dividends or profits accrued from the stocks, bonds, or securities, or anything of value not specified in the contract.

Stock Benefits

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to issue or deliver or to permit an agent, officer, or employee to issue or deliver as an inducement to insurance:

- company stock or other capital stock
- a benefit certificate or share in a corporation
- securities
- a special or advisory board contract or any other contract promising returns or profits.

These prohibitions above do not prohibit issuing or delivering a participating insurance policy otherwise authorized by law.

Unfair Discrimination in Life Insurance and Annuity Contracts

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make or permit with respect to a life insurance or life annuity contract an unfair discrimination between individuals of the same class and equal life expectancy regarding the rates charged, the dividends or other benefits payable, or any of the other terms and conditions of the contract.

Certain Practices Not Discrimination or Inducement

In the context of this sub-heading:
Health-related services This means services that are available in connection with an accident and health insurance policy or certificate or an evidence of coverage and that are directed to an individual's health improvement or maintenance.
Health-related information This means information directed to an individual's health improvement or maintenance or to costs associated with particular options available in connection with an accident and health insurance policy or certificate or an evidence of coverage.

It is not a rebate or discrimination prohibited by any of the proscriptions mentioned above:

- for a life insurance or life annuity contract, to pay a bonus to a policyholder or otherwise abate the policyholder's premiums in whole or in part out of surplus accumulated from nonparticipating insurance policies if the bonus or abatement is fair and equitable to policyholders and is in the best interests of the insurer and its policyholders
- for a life insurance policy issued on the industrial debit plan, to make to a policyholder who has continuously for a specified period made premium payments directly to the insurer's office an allowance in an amount that fairly represents the saving in collection expenses
- for a group insurance policy, to readjust the rate of premium based on the loss or expense experience under the policy at the end of a policy year if the adjustment is retroactive for only that policy year
- for a life annuity contract, to waive surrender charges under the contract when the contract holder exchanges that contract for another annuity contract issued by the same insurer if the waiver and the exchange are fully, fairly, and accurately explained to the contract holder in a manner that is not deceptive or misleading
- in connection with an accident and health insurance policy, to provide to policy or certificate holders, in addition to benefits under the terms of the insurance contract, health-related services or health-related information, or to disclose the availability of those additional services and information to prospective policy or certificate holders

- in connection with a health maintenance organization evidence of coverage, to provide to enrollees, in addition to benefits under the evidence of coverage, health-related services or health-related information, or to disclose the availability of those additional services and information to prospective enrollees or contract holders.

Deceptive Name, Word, Symbol, Device or Slogan

It is generally an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to use, display, publish, circulate, distribute, or cause to be used, displayed, published, circulated, or distributed in a letter, pamphlet, circular, contract, policy, evidence of coverage, article, poster, or other document, literature, or public media:

- a name as the corporate or business name of a person or entity engaged in the business of insurance or in an insurance-related business in this state that is the same as or deceptively similar to the name adopted and used by an insurance entity, health maintenance organization, third-party administrator, or group hospital service corporation authorized to engage in business under the laws of this state
- a word, symbol, device, or slogan, either alone or in combination and regardless of whether registered, and including the titles, designations, character names, and distinctive features of broadcast or other advertising, that is the same as or deceptively similar to a word, symbol, device, or slogan adopted and used by an insurance entity, health maintenance organization, third-party administrator, or group hospital service corporation to distinguish the entity or the entity's products or services from another entity.

If more than one person or entity uses names, words, symbols, devices, or slogans, either alone or in combination, that are the same or deceptively similar and are likely to cause confusion or mistake, the person or entity that demonstrates the first continuous actual use of the name, word, symbol, device, slogan, or combination has not engaged in an unfair method of competition or deceptive act or practice under this section.

Appropriate Advertising

Definition of advertisement

An insurance advertisement is defined very broadly in as any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy. Advertisements include but are not limited to:

Printed or published materials	Radio & TV	Prepared sales talks
Newspapers & magazines	Billboards	Websites/E-mail
Representations by agents	Leaflets	Descriptive literature
Circulars	Sales aids	Flyers
Illustrations	Form letters	Direct mail
Business cards	Videos	Faxes

General Guidelines

The following guidelines are applicable to <u>all</u> lines of coverage (28 TAC 21.103-21.112).

- Advertisements must be truthful and not misleading either in fact or in implication.
- The format and content of an advertisement must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive.
- Whether an advertisement has a capacity or tendency to mislead or deceive is determined from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.
- All information required to be disclosed must be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading.
- Words or phrases may not be used which are misleading or deceptive because their meaning is not clear, or is clear only to persons familiar with insurance terminology.
- An advertisement cannot use misleading words or symbols, or come in an envelope that would imply the material is coming from a governmental entity.
- An advertisement may not contain statements that avoid a clear and unequivocal statement that insurance or an annuity or HMO coverage or prepaid legal services coverage is the subject matter of the solicitation.
- An advertisement, other than “institutional” must explicitly and conspicuously disclose the type of product as it is classified or addressed by statute or rule or as the products are filed with TDI.
- An advertisement that includes an application, and is advertising more than one policy, must clearly disclose the cost and benefit applicable to each separate policy.
- The benefits advertised must match the policy benefits. An advertisement must not imply broader benefits than actually exist.
- No advertisement may omit information or use words, phrases, statements, references, or illustrations, if the omission or use of such information has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any loss covered, premium payable, or policy benefit payable.
- Benefits provided by a rider to a policy may not be advertised with greater prominence than the primary policy benefits.
- Endorsements, riders, or other benefits available at an additional cost, are to be so advertised to disclose the fact of additional cost.
- An "invitation to contract" advertisement of endorsements, riders, or other optional benefits which may be added to the policy advertised for which premiums are quoted for such policy, must disclose the additional premium for the endorsements, riders, or optional benefits. If premiums for the policy appear in the advertisement, the premiums for any riders, endorsements, or optional benefits must also separately appear.
- An advertisement may not directly or indirectly unfairly disparage competitors, their policies, services, or business methods, and may not unfairly disparage or minimize competing methods of marketing insurance.
- An advertisement may not contain statements that are untrue in fact or that are misleading by implication in respect of another insurer's assets, corporate structure, financial standing, age, or relative position of the insurer in the insurance business.
- An advertisement may not directly or indirectly make an unfair or incomplete comparison of policies, benefits, dividends, or rates, or compare non-comparable

policies, e.g., whole life vs. term life, major medical vs. indemnity policy, group vs. individual.

No advertisement can employ words, letters, initials, symbols, or other devices that are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of misleading materials, include, but are not limited to, those which imply any of the following:

- The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institution or senior organizations.
- The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions or senior organizations.

Advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer must have the written approval of the insurer before they may be used. These ads must contain the agent's name, business address, telephone number, and any insurance license number.

Ads used by insurers or their representatives cannot solicit a particular class by stating or implying that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

Seminars, Classes, Informational Meetings

An advertisement may include an invitation to an event or group meeting where information will be disseminated regarding insurance products, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products. Such advertising may only use the terms "seminar," "class," "informational meeting," "retirement," "estate planning," "financial planning," "living trust," or substantially equivalent terms to characterize the purpose of the gathering/event if it adds the words "and insurance sales presentation" immediately following those terms in the same type size and font as those terms. §21.121(c).

Advertising Prohibitions

The words "savings," "investment," "deposit," "investment plan" and similar terms cannot be used to refer to the premium or to the interest to be credited to the contract in a context or under such circumstances or conditions that have the capacity or tendency to confuse or mislead the proposed purchaser as to the nature and limitations of the product or to any benefits received from it (28 TAC 21.103 & .114).

- An advertisement must not use the phrase "low cost" or "low cost plan" without providing a demonstration that a composite of lower production, administrative, and claim cost resulting in a low premium rate to the public.
- An advertisement may not imply that there are advantages that usually apply to group coverage, and/or uses words such as certificate or enrollment, when the policy offered is actually an individual policy. (There are some individual policies that have discounted rates for minimum levels of participation; ads for such policies may describe those discounts.) Neither may an advertisement imply that prospective policyholders would become part of a group or other relationship that does not, in fact, exist.
- An advertisement for life, accident and health, or annuities may not use the existence of the Guaranty Association (fund) as an inducement to purchase coverage.

Not Considered Advertising

The following materials are not considered to be advertising provided they are not used to urge the purchase, increase, modification, or retention of a policy of insurance(28 TAC Sec 21.102):

- Materials used by an insurance company within its own organization and not for public distribution;
- Communications with policyholders;
- A general announcement sent by a group policyholder to members of the eligible group that a policy has been written or arranged; or
- Correspondence between a prospective group policyholder and an insurer in the course of negotiating a group contract.
- Agent recruitment/training materials, i.e., materials used solely for the training, recruitment, and education of an insurer's personnel, and agents. Statements in such materials that are intended to be used, or that *may* be used, in consumer sales presentations are *not* exempt. We do not assume that *all* agent training material is exempt.

Note: The company may not misrepresent products to its own agents (TIC Sec 543).

Unfair Settlement Practices

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

- misrepresenting to a claimant a material fact or policy provision relating to coverage at issue
- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of; i) a claim with respect to which the insurer's liability has become reasonably clear, or ii.) a claim under one portion of a policy with respect to which the insurer's liability has become reasonably clear to influence the claimant to settle another claim under another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion;
- failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim
- failing within a reasonable time to:
    i. affirm or deny coverage of a claim to a policyholder
    ii. submit a reservation of rights to a policyholder;
- refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy
- undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, unless the payment is a compromise settlement of a doubtful or
- disputed claim
- refusing to pay a claim without conducting a reasonable investigation with respect to the claim
- with respect to a Texas personal automobile insurance policy, delaying or refusing settlement of a claim solely because there is other insurance of a different kind available to satisfy all or part of the loss forming the basis of that claim

- requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person unless:
    i. a court orders the claimant to produce those tax returns
    ii. the claim involves a fire loss
    iii. the claim involves lost profits or income.

The prohibitions in the section above do not provide a cause of action to a third party asserting one or more claims against an insured covered under a liability insurance policy.

Misrepresentation of Insurance Policy

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to misrepresent an insurance policy by:

- making an untrue statement of material fact
- failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made
- making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact
- making a material misstatement of law
- failing to disclose a matter required by law to be disclosed, including failing to make a disclosure in accordance with another provision of this code.

CHAPTER 2: ANNUITY CONTRACTS AND THE SENIOR MARKET

One of the requirements of 28 TAC Sec 19.1028 is to discuss recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an annuity.

Short term memory/judgment

Agents are to develop ways to recognize that a senior may lack the short-term memory and judgment needed to assess a policy or annuity. The brain's ability to learn and remember recent events can change over time due to any number of reasons. Researchers and doctors working with diseases like bipolar depression and Alzheimer's are finding out that the brain of a disease victim suffers decrements (reductions) in its short-term memory and learning capacities.

Insurance agents are now authorized by the legislature to make objective evaluations as to the ability of an individual to contract. Examples of short-term memory capability test indicators might include the following;

- Count backwards from 100 by sevens- Thus, 93, 86, 79, 72, 65, … and so on.
- "I am going to say three words- bacon, brown, skillet." (Any three words will do, but associated words are acceptable.) "We will discuss other matters for a few minutes, and then you will need to recite the words back to me.

These short-term memory test indicators are for illustrative purposes only. Any tests or indicators should be previewed and probably approved by a representative of the insurance company the agent is representing.

Knowingly Purchase an Annuity

Consider the case where the 'indicators' show "…that a prospective insured may lack the short-term memory or judgment to knowingly purchase an insurance product…" What is the agent to do?

Someone who completely lacks the powers of understanding is not capable of making a contract, except that the individual is statutorily liable for the value of necessities furnished under a contract. Necessities mean such things as groceries and rent, not insurance. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

Subject to Rescission

A senior who may exhibit short-term memory loss would not seem to fall into the *non compos* class. However, an insurance contract made by a person of unsound mind before a judicial determination of incapacity has been determined is subject to rescission. Bolstering the case for such a rescission would be proof that a person is substantially unable to manage their financial affairs or resist fraud or undue influence. A person lacking sufficient mental capacity to enter into a contract is not held competent even if he has not been judged insane by a court. He or she is one who is unable to understand the effect and nature of their act in making the agreement. An insane person's voidable contract can be ratified or disaffirmed when he or she is again sane, or by the guardian during insanity or his or her representative after death.

Status of Seniors- How are senior citizens doing financially? In answering this question, it is a mistake to assume that all senior citizens are wealthy; it is equally wrong to assume that all seniors are poor. Seniors are an economically diverse group, and the incomes received are far from uniform.

Among the population aged 65 and older in the United States, the poverty rate (the percentage of individuals living in poverty, or economic hardship characterized by low income) has declined by over two-thirds in the past five decades. In 2019, approximately 8.9% of aged individuals had income below the poverty thresholds (dollar amounts used to determine poverty status). However, the number of aged poor has increased since the mid-1970s as the total number of the aged population has grown. In 2019, 4.9 million people aged 65 and older lived in poverty (*Poverty Among the Population Aged 65 and Older*, Congressional Research Service, April 14, 2021).

Risk and the Senior Client

Risk is traditionally defined in terms of uncertainty, the uncertainty concerning the occurrence of a loss. The major risk associated with old age is insufficient income during retirement. When workers retire, they lose their normal work earnings. Unless they have accumulated sufficient financial assets on which to draw, or have access to other sources of retirement income, such as Social Security or a private pension, they will be confronted with a serious problem of economic insecurity. Retired persons

generally own insufficient financial assets. Financial assets are important since investment income can supplement any retirement income, and the assets provide a cushion for emergencies.

Census Bureau data for 2019 show the median net worth (excluding home equity) for households age 65 or older was $87,180. In 2019, the population age 65+ was 54.1 million—30 million women and 24.1 million men. They represented 16% of the population, more than one in every seven Americans. The number of older Americans has increased by 14.4 million (or 36%) since 2009, compared to an increase of 3% for the under-65 population. The median income of older persons in 2019 was $27,398. Men had a higher median income overall: $36,921 compared to $21,815 for women. From 2018 to 2019, the real median income (after adjusting for inflation) of all households headed by older people increased by 6.5%.

Pre vs. Post-Retirement Planning- The pre-retirement stage of life can cover the years from age 50 to age 65. During this time of life, families become "empty nesters," and their children have moved into adulthood. Beside the feelings wrought by such a change, the reality is that the years have passed quickly and that retirement is on the horizon. For many working adults, their first serious efforts at financial planning for retirement begin during these years. No matter what the age, there is great truth in the principle that it is "never too early to begin planning your retirement finances." When an individual faces the idea of planning, the following questions should be asked about pre-retirement financial planning.

How Much Money Will be Needed in Retirement? – People need to plan on living on less money in retirement. But the good news is that many expenses may be reduced. For instance, a person may need to maintain only one car and may have a reduced need for business attire and entertainment obligations. Housing requirements can normally be reduced as well. In these ways, as well as many others, expenses can be reduced significantly. A goal can be set of initially having a minimum of 70 to 75 percent of pre-retirement income coming in at retirement. Adjustments should be made gradually rather than suddenly. Begin living on less 3 to 5 years prior to retirement. Finding corners that can be cut, without reducing the quality of life, can be a challenging, but very rewarding, adventure in pre-retirement planning.

Projecting Retirement Income- Generally, retirement income will consist of Social Security benefits; pension and/or retirement savings plan benefits, interest and dividend income from personal savings, and post-retirement earnings. Institutions that sell or sponsor retirement savings vehicles can help estimate projected benefits from retirement plans. The Social Security Administration provides a Social Security Statement that can assist in estimating future Social Security benefits. It is important to check Social Security income records for accuracy on a regular basis. Errors cannot be corrected after a certain amount of time.

The local Social Security office can assist in estimating future Social Security benefits. The accuracy of Social Security income records should be checked every 3 years. By going to the Social Security Administration website (www.ssa.gov), individuals may request a form to check their records at no charge.

Inflation is a significant problem for anyone on fixed incomes, because purchasing power diminishes as prices rise. Social Security has a built-in cost-of-living factor. Its

future may be in doubt in light of federal deficits and future Social Security tax increases to support the system. Inflation affects other fixed income sources as well. Long-term inflationary trends are very difficult to project, but cannot be ignored. The best approach is to put aside as much money as possible before retirement. It is also important that the earnings or returns on invested assets be greater than inflation. Otherwise, the real value of the investment declines.

Post-retirement planning has a commonality with pre-retirement planning; husband your money. This is important because the individual has stopped working; there is no stream of income to supplement savings. Many individuals will face a financial emergency in the retirement years. As preparation, attempts should be made to have a sum set aside in an interest-bearing account. A commitment should be made that these emergency funds are only for a *real* emergency. Small consumer loans and credit cards may be convenient sources of emergency funds, but they carry a very high cost. An adequate emergency fund can eliminate the additional expense of interest. The fund is used only as "a last resort" and every effort should be made to replenish it after it has been accessed.

Selling to the Senior Market

The potential of the senior market is huge and growing rapidly. If adults age 65 and over are included, the senior market is projected to exceed 78,000,000 by the year 2035, based on U.S. Census data. This has significant bearing on both for-profit and non-profit marketing efforts. Seniors and pre-retirees who plan now by building the best asset management strategy will reap the greatest benefit from those who market financial products to seniors. Senior-focused selling, active networking and focusing on senior needs, will provide for growth in this market. An understanding the dynamics of this market will benefit the insurance industry. It will also be of assistance to seniors, who will have more information and product choice at their disposal.

Employment is projected to grow from 153.5 million to 165.4 million jobs from 2020 to 2030. Pandemic recovery and growth in healthcare-related occupations are expected to account for a large share of projected job growth. Gray hair is appearing at an ever-increasing clip in the workplace. Senior Americans comprise 10 percent of the workforce, but account for 22 percent of the nation's job growth. By 2030, all baby boomers will be at least 65 years old, and 9.5 percent of the civilian labor force is projected to be older than 65. Not only is the share of older people in the labor force growing, but their labor force participation rates are rising.

According to the Bureau of Labor Statistics, workers aged 55 and over will increase twice as fast as the aggregate workforce. The senior market is as deep as it is wide. One of its more interesting characteristics is its diversity. In 1996, the baby boomer generation of approximately 78 million began turning 50 at the rate of 300,000 per month. In an unprecedented paradigm shift, both parents and their children are now members of the senior population, with ages ranging from 50 to over 100 and experiences ranging from the Great Depression to Woodstock.

Application of basic sales principles to the senior market should play a key role in a thorough marketing plan with the greatest potential for success. Here are ten key points to remember in dealing with the senior market;

1. Never think that the elderly market is “old.” They do not consider themselves old.
2. Never attempt to scare them into buying. Scare tactics turn people off.

3. Always treat them as equals
4. Do not pander or be obsequious. Never talk down; they are not dumb. In fact, they are probably smarter -and richer -than you.
5. Do not hoodwink or con. Seniors are skeptical; they have seen it all before.
6. Do not paint all seniors with a broad brush; they are not all alike. There are several age cohorts above age 50 and numerous niche markets.
7. Guarantees are taken seriously. Seniors fear being taken.
8. Glitz and gaudiness have no place. Seniors are conservative about expenditures as a result of being on fixed incomes.
9. Ads should look like ads. No elaborate *fonts*. Type are recommended to be at least 12 point in an easy to follow format, not condensed or spread.
10. As with any other client, treat seniors with respect.

CHAPTER 3: TEXAS AGENTS' SALES PRACTICES

Misrepresentation Regarding Policy or Insurer

This information comes from Texas Penal Code; Title 7, Offenses Against Property, Chapter 35 "Insurance Fraud". If a licensee violates proper sales practices both civil and criminal penalties can apply. There follows a listing of criminal penalties for insurance licensees in Texas who are intent upon violating or circumventing proper insurance sales practices.

Definitions

Insurance policy This means a written instrument in which is provided the terms of any certificate of insurance, binder of coverage, contract of insurance, benefit plan, nonprofit hospital service plan, motor club service plan, surety bond, cash bond, or any other alternative to insurance authorized by Chapter 601, Transportation Code. The term includes any instrument authorized to be regulated by the Texas Department of Insurance.
Insurer This term has the meaning assigned by Article 1.02 of the Insurance Code.
Statement This means an oral or written communication or a record or documented representation of fact made to an insurer. The term includes computer-generated information.
Value of the claim This means the total dollar amount of a claim for payment under an insurance policy or, as applicable, the value of the claim determined under Section 35.025.

Materiality

A statement is material for the purposes of this chapter, regardless of the admissibility of the statement at trial, if the statement could have affected:

- the eligibility for coverage or amount of the payment on a claim for payment under an insurance policy
- the decision of an insurer whether to issue an insurance policy.

Insurance Fraud

A person commits an offense if, with intent to defraud or deceive an insurer, the person, in support of a claim for payment under an insurance policy:

- prepares or causes to be prepared a statement that:
    i. the person knows contains false or misleading material information; and
    ii. is presented to an insurer; or
- presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

It is also an offense if this is done in support of an application for an insurance policy. Along the same lines, a person commits an offense if, with intent to defraud or deceive an insurer, the person solicits, offers, pays, or receives a benefit in connection with the furnishing of goods or services for which a claim for payment is submitted under an insurance policy.

An offense under the sections mentioned above is classified as follows;
- a Class C misdemeanor if the value of the claim is less than $100
- a Class B misdemeanor if the value of the claim is $100 or more but less than $750
- a Class A misdemeanor if the value of the claim is $750 or more but less than $2,500
- a state jail felony if the value of the claim is $2,500 or more but less than $30,000
- a felony of the third degree if the value of the claim is $30,000 or more but less than $150,000
- a felony of the second degree if the value of the claim is $150,000 or more but less than $300,000
- a felony of the first degree if:
    (A) the value of the claim is $300,000 or more; or
    (B) an act committed in connection with the commission of the offense places a person at risk of death or serious bodily injury.

The court will order a defendant convicted of an offense under this section to pay restitution, including court costs and attorney's fees, to an affected insurer. If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both. For purposes of this section, if the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim. If it is shown on the trial of an offense under this section that the actor submitted a bill for goods or services in support of a claim for payment under an insurance policy to the insurer issuing the policy, a rebuttable presumption exists that the actor caused the claim for payment to be prepared or presented.

Value of Claim

Except as noted in the preceding section, if the value of a claim is not readily ascertainable, the value of the claim is:
- the fair market value, at the time and place of the offense, of the goods or services that are the subject of the claim; or
- the cost of replacing the goods or services that are the subject of the claim within a reasonable time after the claim.

If goods or services that are the subject of a claim cannot be reasonably ascertained under the procedures as outlined above, the goods or services are considered to have a value of $500 or more but less than $1,500. If the actor proves by a preponderance of

the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

Aggregation and Multiple Offenses

When separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the claims aggregated in determining the classification of the offense. When three or more separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the classification of the offense is one category higher than the most serious single offense proven from the separate claims, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

Jurisdiction of Attorney General

The attorney general may offer to an attorney representing the state in the prosecution of an offense as outlined above. The investigative, technical, and litigation assistance skills of the attorney general's office can be utilized. The attorney general may prosecute or assist in the prosecution of an offense listed above on the request of the attorney representing the state.