

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #4

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WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY WV Code §§33-2-10 and 33-11-6

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

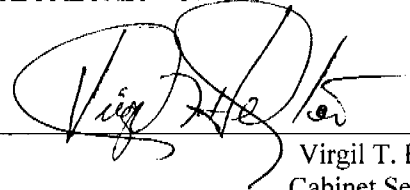
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11B

TITLE OF RULE BEING PROPOSED: Suitability In Annuity Transactions

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE  
RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND  
COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED  
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
\_\_\_\_\_  
Virgil T. Helton  
Cabinet Secretary  
West Virginia Department of Revenue

**TITLE 114  
LEGISLATIVE RULES  
OFFICES OF THE INSURANCE COMMISSIONER**

**SERIES 11B  
SUITABILITY IN ANNUITY TRANSACTIONS**

Section

- 114-11B-1. General.
- 114-11B-2. Scope.
- 114-11B-3. Exemptions.
- 114-11B-4. Definitions.
- 114-11B-5. Duties of Insurers and Insurance Producers.
- 114-11B-6. Mitigation of Responsibility.
- 114-11B-7. Recordkeeping.

**TITLE 114  
LEGISLATIVE RULES  
OFFICES OF THE INSURANCE COMMISSIONER**

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**SERIES 11B  
SUITABILITY IN ANNUITY TRANSACTIONS**

OFFICE OF THE  
SECRETARY OF STATE

**§114-11B-1. General.**

1.1. The purpose of this rule is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. This rule is based on the National Association of Insurance Commissioners' "Suitability in Annuity Transactions Model Regulation" (Model 275), as amended in 2006.

1.2. Nothing in this rule creates or implies a private cause of action for a violation of this rule.

1.3. Authority. -- W. Va. Code §§33-2-10 and 33-11-6.

1.4. Filing Date. --

1.5. Effective Date. --

**§114-11B-2. Scope.**

This rule applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

**§114-11B-3. Exemptions.**

Unless otherwise specifically included, this rule does not apply to recommendations involving:

3.1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule;

3.2. Contracts used to fund:

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA), 29 U.S.C. Section 1001, et seq. as amended;

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

c. A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

f. Formal prepaid funeral contracts.

**§114-11B-4. Definitions.**

4.1. "Annuity" includes a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

4.2. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

4.3. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

4.4. "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

**§114-11B-5. Duties of Insurers and Insurance Producers.**

5.1. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and his or her financial situation and needs.

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5.2. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

- a. The consumer's financial status;
- b. The consumer's tax status;
- c. The consumer's investment objectives; and
- d. Other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

5.3. a. Except as provided under subdivision b of this subsection, neither an insurance producer, nor an insurer where no producer is involved, has any obligation to a consumer under subsection 5.1 of this section if the consumer:

1. Refuses to provide relevant information requested by the insurer or insurance producer;
2. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
3. Fails to provide complete or accurate information.

b. An insurer or insurance producer's recommendation subject to subdivision a of this subsection shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

5.4 a. An insurer shall either assure that a system to supervise recommendations reasonably designed to achieve compliance with this rule is established and maintained by complying with subdivisions c, d and e of this subsection, or establish and maintain a system, including at a minimum, but not limited to:

1. Maintaining written procedures; and
2. Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.

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b. An insurance agency shall either adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or establish and maintain such a system, including, but not limited to:

1. Maintaining written procedures; and

2. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule.

c. An insurer may contract with a third party to establish and maintain the system of supervision required by subdivision a of this subsection with respect to insurance producers under contract to or employed by the third party.

d. An insurer shall make reasonable inquiry to assure that the third party with whom it contracts under subdivision c of this subsection is performing the supervision functions required by subdivision a of this subsection and take reasonable action under the circumstances to enforce the contractual obligation. An insurer may comply with its obligation to make reasonable inquiry by:

1. Annually obtaining certification from a senior officer of the third party representing that the third party is performing the required functions; and

2. Periodically selecting, based on reasonable selection criteria, third parties contracting under subdivision c of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

e. An insurer that contracts with a third party pursuant to subdivision c of this subsection and that complies with the requirements to supervise in subdivision d of this subsection has fulfilled its responsibilities under subdivision a of this subsection.

f. An insurer or insurance agency is not required by subdivision a or b of this subsection to:

1. Review, or provide for review of, all insurance producer solicited transactions; or

2. Include in its system of supervision an insurance producer's recommendations of products other than the annuities offered by the insurer or insurance agency.

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g. An insurance agency contracting with an insurer pursuant to subdivision c of this subsection shall, upon request of the insurer, promptly give the insurer certification described in subdivision d of this subsection or a clear statement of why it is unable to meet the certification criteria.

h. No person may provide a certification under paragraph 1, subdivision d of this subsection unless:

1. The person is a senior officer with responsibility for the delegated functions; and
2. The person has a reasonable basis for making the certification.

5.5. Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability satisfies the requirements of this section for recommendations of variable annuities. However, nothing in this subsection limits the Insurance Commissioner's ability to enforce the provisions of this rule.

**§114-11B-6. Mitigation of Responsibility.**

6.1. The Insurance Commissioner may order an insurer, insurance producer, and insurance agency producer that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this rule;

6.2. The Insurance Commissioner may reduce or eliminate any penalty under W. Va. Code §33-12-24 for a violation of subsection 5.1, subsection 5.2, or subdivision b of subsection 5.3 of this rule if corrective action for the consumer is taken promptly after a violation is discovered.

**§114-11B-7. Recordkeeping.**

7.1. Insurers, insurance agencies and insurance producers shall maintain or be able to make available to the Insurance Commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for ten (10) years after the transaction was completed.

7.2. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer.

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7.3. Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.