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Sequence Number: 06-04-22
Notice ID(s): 3505
File Date: 6/3/2022

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Tennessee Insurance Division
Contact Person:	Jenny Taylor
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
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Phone:	(615) 741-6500
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway			
Address 2:	Conference Room 1B			
City:	Nashville			
Zip:	37243			
Hearing Date:	08/04/2022			
Hearing Time:	10:00 AM	x	CST/CDT	EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0780-01-86	Suitability in Annuity Transactions
Rule Number	Rule Title
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0780-01-86-.02	Scope
0780-01-86-.03	Authority

0780-01-86-.04	Exemptions
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0780-01-86-.06	Duties of Insurers and Insurance Producers
0780-01-86-.07	Insurance Producer Training
0780-01-86-.08	Compliance Mitigation; Penalties
0780-01-86-.09	Recordkeeping
Appendix A	Insurance Agent (Producer) Disclosure for Annuities
Appendix B	Consumer Refusal to Provide Information
Appendix C	Consumer Decision to Purchase an Annuity Not Based on a Recommendation

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0780-01-86
Suitability in Annuity Transactions
Amendments

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Rule 0780-01-86-.01 Purpose is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) The purpose of this Chapter is to require producers, as defined in this Chapter, to act in the best interest of the consumer when making a recommendation of an annuity and to insurers to establish and maintain a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
- (2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this Chapter, or to subject a producer to civil liability under the best interest standard of care outlined in rule 0780-01-86-.06 or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Rule 0780-01-86-.02 Scope is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

This Chapter shall apply to any sale or recommendation of an annuity.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Rule 0780-01-86-.03 Authority is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

This Chapter is issued under the authority of T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112(a), 56-6-112(d), 56-6-124(a), and 56-8-101 et seq.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Rule 0780-01-86-.04 Exemptions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Unless otherwise specifically included, this Chapter shall not apply to transactions involving:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Chapter, or;
- (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);
 - (b) A plan described by Sections 401(a), 401(k), 403, 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 of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (f) Formal prepaid funeral contracts.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Rule 0780-01-86-.05 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) "Annuity" means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
- (2) "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- (3) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (4) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives, including, at a minimum, the following:
 - (a) Age;
 - (b) Annual income;
 - (c) Financial situation and needs, including debts and other obligations;
 - (d) Financial experience;
 - (e) Insurance needs;
 - (f) Financial objectives;
 - (g) Intended use of the annuity;
 - (h) Financial time horizon;
 - (i) Existing assets or financial products, including investment, annuity and insurance holdings;

- (j) Liquidity needs;
 - (k) Liquid net worth;
 - (l) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
 - (m) Financial resources used to fund the annuity; and
 - (n) Tax status.
- (5) "Continuing Education Credit" or "CE Credit" means one continuing education credit as defined in rule 0780-01-56.
 - (6) "Continuing Education Provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to rule 0780-01-56.
 - (7) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.
 - (8) "Insurance producer" means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this Chapter, "producer" includes an insurer where no producer is involved.
 - (9) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
 - (10) "Intermediary" 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 producers.
 - (11) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. "Material conflict of interest" does not include cash compensation or non-cash compensation.
 - (12) "Non-cash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.
 - (13) "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
 - (14) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that was intended to result or does result in a purchase, exchange or replacement of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.
 - (15) "Replacement" means a transaction in which a new annuity, policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing annuity, policy or contract has been or is to be:
 - (a) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
 - (b) 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;
 - (c) 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;

- (d) Reissued with any reduction in cash value; or
- (e) Used in a financed purchase.

(16) "SEC" means the United States Securities and Exchange Commission.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Rule 0780-01-86-.06 Duties of Insurers and Insurance Producers is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) **Best Interest Obligations.** A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

(a)

1. **Care Obligation.** The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
 - (i) Know the consumer's financial situation, insurance needs and financial objectives;
 - (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
 - (iv) Communicate the basis or bases of the recommendation.
2. The requirements under Part (a)1. of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.
3. The requirements under Part (a)1. of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.
4. The requirements under this paragraph do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.
5. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

6. The requirements under Part (a)1. of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.
7. The requirements under Part (a)1. of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.
8. The requirements under Part (a)1. of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.
9. The requirements under Part (a)1. of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.
10. In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:
 - (i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;
 - (ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and
 - (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty (60) months.
11. Nothing in this Chapter should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

(b) Disclosure obligation.

1. Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:
 - (i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
 - (ii) An affirmative statement on whether the producer is licensed and authorized to sell the following products:
 - (I) Fixed annuities;
 - (II) Fixed indexed annuities;
 - (III) Variable annuities;
 - (IV) Life insurance;
 - (V) Mutual funds;

- (VI) Stocks and bonds; and
 - (VII) Certificates of deposit;
 - (iii) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:
 - (I) From one insurer;
 - (II) From two or more insurers; or
 - (III) From two or more insurers although primarily contracted with one insurer.
 - (iv) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer 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 producer or by fee as a result of a contract for advice or consulting services; and
 - (v) A notice of the consumer's right to request additional information regarding cash compensation described in part 2 of this subparagraph;
2. Upon request of the consumer or the consumer's designated representative, the producer shall disclose:
- (i) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and
 - (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and
3. Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any 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.
- (b) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.
- (c) Documentation obligation. A producer shall at the time of recommendation or sale:
- 1. Make a written record of any recommendation and the basis for the recommendation subject to this Chapter;
 - 2. Obtain a consumer signed statement on a form substantially similar to Appendix B documenting:
 - (i) A customer's refusal to provide the consumer profile information, if any; and

- (ii) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and
 - 3. Obtain a consumer signed statement on a form substantially similar to Appendix C acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.
 - (d) Application of the best interest obligation. Any requirement applicable to a producer under this paragraph shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.
- (2) Transactions not based on a recommendation.
- (a) Except as provided under subparagraph (b) of this paragraph, a producer shall have no obligation to a consumer under Part (1)(a)1. of this rule related to any annuity transaction if:
 - 1. No recommendation is made;
 - 2. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
 - 3. A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
 - 4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.
 - (b) An insurer's issuance of an annuity subject to subparagraph (a) of this paragraph shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.
- (3) Supervision system.
- (a) Except as permitted under subparagraph (b) of this paragraph, 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 particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.
 - (b) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this regulation, including, but not limited to, the following:
 - 1. The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this Chapter and shall incorporate the requirements of this Chapter into relevant producer training manuals;
 - 2. The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of rule 0780-01-86-.07;
 - 3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;
 - 4. The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a

reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

5. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with Paragraphs (1), (2), (4), and (5) of this rule. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this part prevents an insurer from complying with this part by applying sampling procedures, or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity;
6. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this paragraph;
7. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
8. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this part are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and
9. The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(c)

1. Nothing in this paragraph restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this part. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 0780-01-86-.08 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with paragraph.
2. An insurer's supervision system under this subsection shall include supervision of contractual performance under this paragraph. This includes, but is not limited to, the following:
 - (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(d) An insurer is not required to include in its system of supervision:

1. A producer's recommendations to consumers of products other than the annuities offered by the insurer; or

2. Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.
- (4) Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:
- (a) Truthfully responding to an insurer's request for confirmation of the consumer profile information;
 - (b) Filing a complaint; or
 - (c) Cooperating with the investigation of a complaint.
- (5) Safe harbor.
- (a) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this Chapter. This paragraph applies to all recommendations and sales of annuities made by financial professionals 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. However, nothing in this paragraph shall limit the insurance commissioner's ability to investigate and enforce the provisions of this Chapter.
 - (b) Nothing in subparagraph (a) of this paragraph shall limit the insurer's obligation to comply with rule 0780-01-86-.06(3)(a), although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.
 - (c) For subparagraph (a) of this paragraph to apply, an insurer shall:
 1. Monitor the relevant conduct of the financial professional seeking to rely on subparagraph (a) of this paragraph 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 Tennessee securities laws using information collected in the normal course of an insurer's business; and
 2. Provide to the entity responsible for supervising the financial professional seeking to rely on subparagraph (a) of this paragraph, such as the financial professional's broker-dealer or investment adviser registered under federal or Tennessee securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.
 - (d) For purposes of this paragraph, "financial professional" means a producer that is regulated and acting as:
 1. A broker-dealer registered under federal or Tennessee securities laws or a registered representative of a broker-dealer;
 2. An investment adviser registered under federal or Tennessee securities laws or an investment adviser representative associated with the federal or Tennessee registered investment adviser; or
 3. A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.
 - (e) For purposes of this paragraph, "comparable standards" means:
 1. With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;

2. With respect to investment advisers registered under federal or Tennessee securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under either the Investment Advisers Act of 1940 or Tennessee securities law, including but not limited to, the Form ADV and interpretations; and
3. With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Rule 0780-01-86-.07 Insurance Producer Training is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this rule.
- (2)
 - (a)
 1. An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider.
 2. Insurance producers who hold a life insurance line of authority on the effective date of this Chapter and who desire to sell annuities shall complete the requirements of this paragraph within six (6) months after the effective date of this Chapter. Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter may not engage in the sale of annuities until the annuity training course required under this rule has been completed.
 - (b) The minimum length of the training required under rule 0780-01-86-.07(2) shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
 - (c) The training required under rule 0780-01-86-.07(2) shall include information on the following topics:
 1. The types of annuities and various classifications of annuities;
 2. Identification of the parties to an annuity;
 3. How product specific annuity contract provisions affect consumers;
 4. The application of income taxation of qualified and non-qualified annuities;
 5. The primary uses of annuities; and
 6. Appropriate standard of conduct, sales practices, replacement and disclosure requirements.

- (d) Providers of courses intended to comply with rule 0780-01-86-.07(2) shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- (e) A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in rule 0780-01-56.
- (f) A producer who has completed an annuity training course approved by the department of commerce and insurance prior to July 1, 2022, shall, within six (6) months after July 1, 2022, complete either:
 - 1. A new four (4) credit training course approved by the department of commerce and insurance after July 1, 2022; or
 - 2. An additional one-time one (1) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.
- (g) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with rule 0780-01-56.
- (h) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with rule 0780-01-56.
- (i) The satisfaction of the training requirements of another state that are substantially similar to the provisions of rule 0780-01-86-.07(2) shall be deemed to satisfy the training requirements of this rule in this state.
- (j) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this paragraph shall be deemed to satisfy the training requirements of this paragraph in this state.
- (k) An insurer shall verify that an insurance producer has completed the annuity training course required under rule 0780-01-86-.07(2) before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under rule 0780-01-86-.07(2) by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-8-101 et seq. 56-8-104(15), 56-8-107, and 56-8-110 and Tenn. Comp. Rules and Regs. 0780-01-56-.08. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Rule 0780-01-86-.08 Compliance Mitigation; Penalties is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) An insurer is responsible for compliance with this Chapter. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order, pursuant to statutory authority granting power for such order:
 - (a) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this Chapter by the insurer's, by its insurance producer, or an entity contracted to perform the insurer's supervisory duties violation of this Chapter;
 - (b) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter; and

- (c) Appropriate penalties and sanctions.
- (2) Any applicable penalty under T.C.A. §§ 56-1-411, 56-2-305, 56-6-112, or 56-8-101, et seq. for a violation of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.
- (3) The authority to enforce compliance with this regulation is vested exclusively with the commissioner.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, 56-8-109, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Rule 0780-01-86-.09 Recordkeeping is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Insurers, general agents, independent agencies and insurance producers shall maintain or 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 the recommendations that were the basis for insurance transactions for five (5) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
- (2) Records required to be maintained by this Chapter may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124(a), 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Appendix A Insurance Agent (Producer) Disclosure for Annuities is a new rule. All subsequent rules, and references thereto, are renumbered accordingly.

Appendix A

Insurance Agent (Producer) Disclosure for Annuities

Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____

Business\Agency Name: _____ Website: _____

Business Mailing
Address: _____

Business Telephone Number: _____

Email Address: _____

National Producer Number in [state]: _____

CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- ☐ Fixed or Fixed Indexed Annuities
- ☐ Variable Annuities
- ☐ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non- insurance financial products that I am licensed and authorized to provide advice about or to sell.

- ☐ Mutual Funds
- ☐ Stocks/Bonds
- ☐ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

- ☐ Annuities from Only One (1) Insurer ☐ Annuities from Two or More Insurers
- ☐ Annuities from Two or More Insurers although I primarily sell annuities from: _____

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

- ☐ Commission, which is usually paid by the insurance company or other sources. If other sources, describe: _____.
- ☐ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
- ☐ Other (Describe): _____.

If You have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

Drafting Note: This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate

producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.

Drafting Note: The acknowledgement and signature should be in immediate proximity to the disclosure language.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

Customer Signature

Date

Agent (Producer) Signature

Date

Appendix B Consumer Refusal to Provide Information is a new rule. All subsequent rules, and references thereto, are renumbered accordingly.

Appendix B

Consumer Refusal to Provide Information

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are You being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent, broker, or company needs information about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives and situation. You may lose protections under the Insurance Code of Tennessee if You sign this form or provide inaccurate information.

Statement of Purchaser:

- ☐ I Refuse to provide this information at this time.
- ☐ I have chosen to provide Limited information at this time.

Customer Signature

Date

Appendix C Consumer Decision to Purchase an Annuity Not Based on a Recommendation is a new rule. All subsequent rules, and references thereto, are renumbered accordingly.

Appendix C

Consumer Decision to Purchase an Annuity Not Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

Why are You being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, your financial situation, insurance needs and financial objectives.

If You sign this form, it means You know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it without a recommendation, I understand I may lose protections under the Insurance Code of Tennessee.

Customer Signature

Date

Agent/Producer Signature

Date

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: June 2, 2022

Signature: _____

Jenny Taylor

Name of Officer: _____

Jenny Taylor

Title of Officer: _____

Associate General Counsel

Department of State Use Only

Filed with the Department of State on: _____

6/3/2022

Tre Hargett

Tre Hargett
Secretary of State

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Secretary of State
Division of Publications

Chapter 0780-01-86
Suitability in Annuity Transactions
Amendments

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0780-01-86-.01 Purpose

- (1) The purpose of this Chapter is to require [producers, as defined in this Chapter, to act in the best interest of the consumer when making a recommendation of an annuity and to](#) insurers to establish [and maintain](#) a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
- (2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this Chapter, [or to subject a producer to civil liability under the best interest standard of care outlined in rule 0780-01-86-.06 or under standards governing the conduct of a fiduciary or a fiduciary relationship.](#)

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

0780-01-86-.02 Scope

This Chapter shall apply to any ~~sale or recommendation of recommendation to purchase, exchange or replace an annuity, made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.~~

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

0780-01-86-.03 Authority

This Chapter is issued under the authority of T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112(a), 56-6-112(d), 56-6-124(a), and 56-8-101 et seq.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

0780-01-86-.04 Exemptions

Unless otherwise specifically included, this Chapter shall not apply to transactions involving:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Chapter, or;
- (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);
 - (b) A plan described by Sections 401(a), 401(k), 403, 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 of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (f) Formal prepaid funeral contracts.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

0780-01-86-.05 Definitions

- (1) "Annuity" means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
- ~~(2)~~ "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- ~~(3)(2)~~ "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.
- ~~(4)~~ "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives, including, at a minimum, the following:
 - ~~(a)~~ Age;

- (b) Annual income;
 - (c) Financial situation and needs, including debts and other obligations;
 - (d) Financial experience;
 - (e) Insurance needs;
 - (f) Financial objectives;
 - (g) Intended use of the annuity;
 - (h) Financial time horizon;
 - (i) Existing assets or financial products, including investment, annuity and insurance holdings;
 - (j) Liquidity needs;
 - (k) Liquid net worth;
 - (l) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
 - (m) Financial resources used to fund the annuity; and
 - (n) Tax status.
- (5)(3) "Continuing Education Credit" or "CE Credit" means one continuing education credit as defined in rule Tenn. Comp. Rules and Regs. 0780-01-56.
- (6)(4) "Continuing Education Provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to rule Tenn. Comp. Rules and Regs. 0780-01-56.
- (7)(5) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.
- (8)(6) "Insurance producer" "~~Insurer~~" means a person or entity ~~company~~ required to be licensed under the laws of this state to sell, solicit or negotiate insurance ~~provide insurance products~~, including annuities. For purposes of this Chapter, "producer" includes an insurer where no producer is involved.
- (9)(7) "Insurer" "~~Insurance producer~~" means a company ~~person~~ required to be licensed under the laws of this state to provide insurance products, including annuities. ~~sell, solicit or negotiate insurance, including annuities.~~
- (10) "Intermediary" 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 producers.
- (11) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. "Material conflict of interest" does not include cash compensation or non-cash compensation.
- (12) "Non-cash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

(13) "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

(14)(8) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that was intended to result or does result results in a purchase, exchange or replacement of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(15)(9) "Replacement" means a transaction in which a new annuity, policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing annuity, policy or contract has been or is to be:

- (a) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (b) 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;
- (c) 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;
- (d) Reissued with any reduction in cash value; or
- (e) Used in a financed purchase.

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

(16)-(a) "SEC" means the United States Securities and Exchange Commission. Age;

- (b) Annual income;
- (c) Financial situation and needs, including the financial resources used for the funding of the annuity;
- (d) Financial experience;
- (e) Financial objectives;
- (f) Intended use of the annuity;
- (g) Financial time horizon;
- (h) Existing assets, including investment and life insurance holdings;
- (i) Liquidity needs;
- (j) Liquid net worth;

~~(k) Risk tolerance; and~~

~~(l) Tax status.~~

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

0780-01-86-.06 Duties of Insurers and Insurance Producers

- (1) Best Interest Obligations. A producer, when making a recommendation ~~In recommending to a consumer the purchase of an annuity,~~ shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the ~~or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer's,~~ or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of ~~where no producer is involved,~~ shall have reasonable grounds for believing that the recommendation is suitable for the consumer ~~if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation: on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

(a)

1. Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
 - (i) Know the consumer's financial situation, insurance needs and financial objectives;
 - (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
 - ~~(iv)(a)~~ Communicate the basis or bases of the recommendation. ~~The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;~~
2. The requirements under Part (a)1. of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.
3. The requirements under Part (a)1. of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance

needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.

4. The requirements under this paragraph do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.
5. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.
- 6.(b) The requirements under Part (a)1. of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, ~~tax-deferred growth, annuitization or~~ death or living benefit or other insurance-related features.;
- 7.(e) The requirements under Part (a)1. of this paragraph apply to the particular annuity as a whole, ~~and~~ the underlying subaccounts to which funds are allocated at the time of purchase or exchange of ~~an~~the annuity, and riders and similar ~~producer~~product enhancements, if any, ~~are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her suitability information; and~~
8. The requirements under Part (a)1. of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.
9. The requirements under Part (a)1. of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.
- 10.(d) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes ~~exchange or replacement is suitable including~~ taking into consideration whether:
 - (i)1- The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, ~~(such as death, living or other contractual benefits),~~ or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;
 - (ii)2- The ~~replacing product consumer~~ would substantially benefit the consumer in comparison to the replaced ~~from~~ product over the life of the ~~product~~enhancements and improvements; and

- ~~(iii)3-~~ The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding ~~sixty~~~~thirty-~~~~six~~ (60~~36~~) months.

~~11.(2)~~ Nothing in this Chapter should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses is involved, shall make reasonable efforts to obtain the consumer's suitability information.

~~(b)(3)~~ Disclosure obligation. ~~Except as permitted under paragraph (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

1. Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:

(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(ii) An affirmative statement on whether the producer is licensed and authorized to sell the following products:

(I) Fixed annuities;

(II)(4) Fixed indexed annuities;

(III) Variable annuities;

(IV)(a) Life ~~Except as provided under subparagraph (b) of this paragraph, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under paragraphs (1) or (3) related to any annuity transaction if:~~

(V) Mutual funds;

(VI) Stocks and bonds; and

(VII) Certificates of deposit;

(iii) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:

(I) From one insurer;

(II)4- From two or more insurers; or ~~No recommendation is made;~~

(III) From two or more insurers although primarily contracted with one insurer. ~~2- A recommendation was made and was later~~

~~found to have been prepared based on materially inaccurate information provided by the consumer;~~

- ~~(iv)~~ A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer 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 producer or by fee as a result of a contract for advice or consulting services; and
- ~~(v)3-~~ A notice of the consumer's right to request additional information regarding cash compensation described in part 2 of this subparagraph; and the annuity transaction is not recommended; or

24. Upon request of the A-consumer or the consumer's designated representative, the producer shall disclose:~~decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.~~

- (i) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and
- (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

3.(b) Prior to or at the time of the recommendation or sale of An insurer's issuance of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of subject to subparagraph (a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk. is issued.

(b) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(c)(5) Documentation obligation. A An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of recommendation or sale:

1.(a) Make a written record of any recommendation and the basis for the recommendation that is subject to this Chapter rule 0780-01-86-.06(1);

2. Obtain a consumer signed statement on a form substantially similar to Appendix B documenting:

~~(i)(b)~~ A Obtain a customer's signed statement documenting a customer's refusal to provide the consumer profile suitability information, if any; and

(ii) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

3.(e) Obtain a ~~consumereustomer~~ signed statement on a form substantially similar to Appendix C acknowledging the acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the ~~producer's insurance producer's or insurer's~~ recommendation.

(d) Application of the best interest obligation. Any requirement applicable to a producer under this paragraph shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

(2)(6) Transactions not based on a recommendation.

(a) Except as provided under subparagraph (b) of this paragraph, a producer shall have no obligation to a consumer under Part (1)(a)1. of this rule related to any annuity transaction if:

1. No recommendation is made;

2. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

3. A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(b) An insurer's issuance of an annuity subject to subparagraph (a) of this paragraph shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(3) Supervision system.

(a) Except as permitted under subparagraph (b) of this paragraph, 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 particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.

(b)(a) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer'sinsurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

1. The insurer shall establish and maintain reasonable procedures to inform its ~~insurance~~-producers of the requirements of this Chapter and shall incorporate the requirements of this Chapter into relevant ~~insurance~~-producer training manuals;
2. The insurer shall establish and maintain standards for ~~insurance~~-producer product training and shall establish and maintain reasonable procedures to require its ~~insurance~~-producers to comply with the requirements of rule _0780-01-86-.07;
3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;
43. The insurer shall ~~establish provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;~~ 4 The insurer shall maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure ~~that~~ there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives~~a recommendation is suitable~~. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
5. The insurer shall ~~establish and~~ maintain reasonable procedures to detect recommendations that are not in compliance with Paragraphs (1), (2), (4), and (5) of this rule~~suitable~~. This may include, but is not limited to, confirmation of the consumer's consumer profile suitability~~information~~, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this part prevents an insurer from complying with this part by applying sampling procedures, or by confirming the consumer profile suitability~~information~~ or other required information under this section after issuance or delivery of the annuity; ~~and~~
6. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this paragraph;
7. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
8. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this part are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and
96. The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the

effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

~~(c)(b)~~

1. Nothing in ~~this paragraph rule 0780-01-86-.06(6)~~ restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under ~~this partsubparagraph (a)~~. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 0780-01-86-.08 regardless of whether the insurer contracts for performance of a function and regardless of the ~~insurer'sinsurer's~~ compliance with ~~paragraph part 2. of this subparagraph.~~
2. An ~~insurer'sinsurer's~~ supervision system under ~~this subsectionsubparagraph (a)~~ shall include supervision of contractual performance under this ~~paragraphpart~~. This includes, but is not limited to, the following:
 - (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

~~(d)~~ An insurer is not required to include in its system of supervision:

- ~~1.(e)~~ A producer's ~~An insurer is not required to include in its system of supervision an insurance producer's~~ recommendations to consumers of products other than the annuities offered by the insurer; or-
2. Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

~~(4)(7)~~ Prohibited Practices. Neither a ~~An insurance~~ producer nor an insurer shall ~~shall not~~ dissuade, or attempt to dissuade, a consumer from:

- (a) Truthfully responding to an ~~insurer'sinsurer's~~ request for confirmation of the consumer profile suitability information;
- (b) Filing a complaint; or
- (c) Cooperating with the investigation of a complaint.

~~(5)(8)~~ Safe harbor.

- (a) Recommendations and sales of annuities ~~Sales~~ made in compliance with comparable standards ~~FINRA requirements pertaining to suitability and supervision of annuity transactions~~ shall satisfy the requirements under this Chapter. This paragraph applies to all recommendations and ~~FINRA broker-dealer~~ sales of annuities made by financial professionals in compliance with business rules, controls if the suitability and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issuesupervision is similar to those applied to variable annuity sales. However, nothing in this paragraph shall limit the insurance

commissioner's ability to investigate and enforce, including investigate, the provisions of this Chapter.

(b) Nothing in subparagraph (a) of this paragraph shall limit the insurer's obligation to comply with rule 0780-01-86-.06(3)(a), although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c)(b) For subparagraph (a) of this paragraph to apply, an~~the~~ insurer shall:

1. Monitor the relevant conduct of the financial professional seeking to rely on subparagraph (a) of this paragraph or the entity responsible for supervising the financial professional, such as the financial professional's FINRA member broker-dealer or an investment adviser registered under federal or Tennessee securities laws using information collected in the normal course of an insurer's~~insurer's~~ business; and
2. Provide to the entity responsible for supervising the financial professional seeking to rely on subparagraph (a) of this paragraph, such as the financial professional's FINRA member broker-dealer or investment adviser registered under federal or Tennessee securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.~~the FINRA member broker-dealer to maintain its supervision system.~~

(d) For purposes of this paragraph, "financial professional" means a producer that is regulated and acting as:

1. A broker-dealer registered under federal or Tennessee securities laws or a registered representative of a broker-dealer;
2. An investment adviser registered under federal or Tennessee securities laws or an investment adviser representative associated with the federal or Tennessee registered investment adviser; or
3. A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

(e) For purposes of this paragraph, "comparable standards" means:

1. With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;
2. With respect to investment advisers registered under federal or Tennessee securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under either the Investment Advisers Act of 1940 or Tennessee securities law, including but not limited to, the Form ADV and interpretations; and
3. With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

0780-01-86-.07 Insurance Producer Training

- (1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this rule.
- (2)
 - (a)
 1. An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider.
 2. Insurance producers who hold a life insurance line of authority on the effective date of this Chapter and who desire to sell annuities shall complete the requirements of this paragraph within six (6) months after the effective date of this Chapter. Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter may not engage in the sale of annuities until the annuity training course required under this rule has been completed.
 - (b) The minimum length of the training required under rule 0780-01-86-.07(2) shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
 - (c) The training required under rule 0780-01-86-.07(2) shall include information on the following topics:
 1. The types of annuities and various classifications of annuities;
 2. Identification of the parties to an annuity;
 3. How product specific annuity contract provisions affect consumers;
 4. The application of income taxation of qualified and non-qualified annuities;
 5. The primary uses of annuities; and
 6. Appropriate standard of conduct, sales practices, replacement and disclosure requirements.
 - (d) Providers of courses intended to comply with rule 0780-01-86-.07(2) shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

- (e) A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in rule 0780-01-56, Tenn. Comp. Rules and Regs. 0780-01-56.
- (f) A producer who has completed an annuity training course approved by the department of commerce and insurance prior to July 1, 2022, shall, within six (6) months after July 1, 2022, complete either:
 - 1. A new four (4) credit training course approved by the department of commerce and insurance after July 1, 2022; or
 - 2. An additional one-time one (1) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.
- ~~(g)(f)~~ Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with rule Tenn. Comp. Rules and Regs. 0780-01-56.
- ~~(h)(g)~~ Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with rule Tenn. Comp. Rules and Regs. 0780-01-56.
- ~~(i)(h)~~ The satisfaction of the training requirements of another state that are substantially similar to the provisions of rule 0780-01-86-.07(2) shall be deemed to satisfy the training requirements of this rule in this state.
- (j) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this paragraph shall be deemed to satisfy the training requirements of this paragraph in this state.
- ~~(k)(i)~~ An insurer shall verify that an insurance producer has completed the annuity training course required under rule 0780-01-86-.07(2) before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under rule 0780-01-86-.07(2) by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-8-101 et seq. 56-8-104(15), 56-8-107, and 56-8-110 and Tenn. Comp. Rules and Regs. 0780-01-56-.08.

Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

0780-01-86-.08 Compliance Mitigation; Penalties

- (1) An insurer is responsible for compliance with this Chapter. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order, pursuant to statutory authority granting power for such order:
 - (a) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this Chapter by the insurer's, ~~or~~ by its insurance producer, or an

entity contracted to perform the insurer's supervisory duties ~~producer's~~, violation of this Chapter;

- (b) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter; and
 - (c) Appropriate penalties and sanctions.
- (2) Any applicable penalty under T.C.A. §§ 56-1-411, 56-2-305, 56-6-112, or 56-8-101, et seq. for a violation of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.
- (3) The authority to enforce compliance with this regulation is vested exclusively with the commissioner.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, 56-8-109, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

0780-01-86-.09 Recordkeeping

- (1) Insurers, general agents, independent agencies and insurance producers shall maintain or 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 the recommendations that were the basis for insurance transactions for five (5) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
- (2) Records required to be maintained by this Chapter may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124(a), 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110. Administrative History: Original rule filed April 22, 2008; effective July 6, 2008. Repeal and new rule filed August 3, 2015; effective November 1, 2015.

Appendix A

Insurance Agent (Producer) Disclosure for Annuities

Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____

Business\Agency Name: _____ Website: _____

Business Mailing
Address: _____

Business Telephone Number: _____

Email Address: _____

National Producer Number in [state]: _____

CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

☐ Fixed or Fixed Indexed Annuities

☐ Variable Annuities

☐ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non- insurance financial products that I am licensed and authorized to provide advice about or to sell.

☐ Mutual Funds

☐ Stocks/Bonds

☐ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

☐ Annuities from Only One (1) Insurer ☐ Annuities from Two or More Insurers

☐ Annuities from Two or More Insurers although I primarily sell annuities from:

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

☐ Commission, which is usually paid by the insurance company or other sources. If other sources, describe:

_____.

☐ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

☐ Other (Describe): _____.

If You have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

Drafting Note: This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.

Drafting Note: The acknowledgement and signature should be in immediate proximity to the disclosure language.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

Customer Signature

Date

Agent (Producer) Signature

Date

Appendix B

Consumer Refusal to Provide Information

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are You being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent, broker, or company needs information about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives and situation. You may lose protections under the Insurance Code of Tennessee if You sign this form or provide inaccurate information.

Statement of Purchaser:

☐ I Refuse to provide this information at this time.

☐ I have chosen to provide Limited information at this time.

Customer Signature

Date

Appendix C

Consumer Decision to Purchase an Annuity Not Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

Why are You being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, your financial situation, insurance needs and financial objectives.

If You sign this form, it means You know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it without a recommendation, I understand I may lose protections under the Insurance Code of Tennessee.

Customer Signature

Date

Agent/Producer Signature

Date