

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R115-06

Effective September 18, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-6, NRS 679B.130.

A REGULATION relating to insurance; requiring insurers and producers of insurance to provide for the establishment and maintenance of a system for the supervision of recommendations to purchase or exchange annuities; and providing other matters properly relating thereto.

Section 1. Chapter 688A of NAC is hereby amended by adding thereto a new section to read as follows:

1. An insurer shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this chapter and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this chapter.

2. A producer of insurance shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this chapter and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this chapter.

3. *An insurer may contract with a third party, including, without limitation, a producer of insurance, to establish and maintain a system to supervise recommendations pursuant to the provisions of subsection 1 with respect to producers of insurance under contract with or employed by the third party.*

4. *An insurer shall make a reasonable inquiry to ensure that a third party with whom the insurer contracts pursuant to subsection 3 complies with the provisions of subsection 1 and shall take reasonable action to enforce the contractual obligation to comply with the provisions of subsection 1. An insurer may comply with its obligation to make a reasonable inquiry by:*

(a) Obtaining a certification that the third party is complying with the provisions of subsection 1 from a senior manager of the third party who has responsibility for complying with the provisions of subsection 1; and

(b) Periodically reviewing the performance of the third party to determine whether the third party is complying with the provisions of subsection 1. The insurer shall use reasonable procedures in conducting the review.

5. *The provisions of subsections 1 and 2 do not require an insurer or a producer of insurance to:*

(a) Review, or provide for the review of, all solicited transactions of a producer of insurance; or

(b) Include in its system to supervise recommendations advice given to consumers by a producer of insurance concerning products other than the annuities offered by the insurer or producer of insurance.

6. A producer of insurance contracting with an insurer pursuant to subsection 3, when requested by an insurer pursuant to subsection 4, shall provide to the insurer a certification as described in subsection 4 or a clear statement that the producer of insurance is unable to meet the criteria for certification within 10 days after the producer of insurance receives the request from the insurer.

7. A person may not provide a certification pursuant to paragraph (a) of subsection 4 unless:

(a) The person is a senior manager with responsibility for complying with the provisions of subsection 1; and

(b) The person has a reasonable basis for making the certification.

8. Compliance with Conduct Rule 2310 of the National Association of Securities Dealers pertaining to suitability satisfies the requirements of this section for the recommendation of variable annuities.

9. An insurer that contracts with a third party pursuant to subsection 3 and that complies with the requirements set forth in subsection 4 shall be deemed to have complied with the provisions of subsection 1.

Sec. 2. Section 9 of LCB File No. R076-05, which was adopted by the Commissioner of Insurance and was filed with the Secretary of State on February 23, 2006, is hereby amended to read as follows:

Sec. 9. “Nonguaranteed elements” means the elements under an annuity the values of which are not guaranteed at the time that the annuity is issued. ~~[A nonguaranteed element is calculated using at least one other nonguaranteed element.]~~

The term includes, without limitation, premiums, benefits, values, noninterest-based credits, credited interest rates, bonuses and charges.

Sec. 3. Section 11 of LCB File No. R076-05, which was adopted by the Commissioner of Insurance and was filed with the Secretary of State on February 23, 2006, is hereby amended to read as follows:

Sec. 11. “Recommendation” means advice provided by an insurer or a producer of insurance to a prospective purchaser of an annuity concerning the purchase or exchange of one or more annuities ~~[]~~ *that results in the purchase or exchange of an annuity in accordance with the advice provided by the insurer or producer of insurance.*

Sec. 4. Section 13 of LCB File No. R076-05, which was adopted by the Commissioner of Insurance and was filed with the Secretary of State on February 23, 2006, is hereby amended to read as follows:

Sec. 13. 1. Except as otherwise provided in subsection 2, before an insurer or a producer of insurance recommends to a person the purchase of an annuity, or the exchange of an annuity that results in ~~[any additional insurance transaction,]~~ *the purchase or exchange of an annuity in accordance with the recommendation,* the insurer or producer of insurance must make reasonable efforts to obtain:

- (a) The financial and tax status of the person;
- (b) The investment objectives of the person; and
- (c) Any other information that the insurer or producer of insurance determines would be useful in making such a recommendation.

2. Before an insurer or a producer of insurance recommends to a person the purchase of a variable annuity, or the exchange of a variable annuity that results in any additional insurance transaction, the insurer or producer of insurance must make reasonable efforts to obtain:

- (a) The information described in subsection 1; or
- (b) The information described in Conduct Rule 2310 of the National Association of Securities Dealers.

3. Except as otherwise provided in subsection 4, if an insured is harmed financially because an insurer or a producer of insurance failed to comply with subsection 1 or 2, the Commissioner may require the insurer or producer of insurance to take corrective action.

4. An insurer or a producer of insurance is not responsible for any financial damages incurred by an insured relating to the purchase or exchange of an annuity that was recommended by the insurer or producer of insurance if the insured:

- (a) Refused to provide to the insurer or producer of insurance the information described in subsection 1 or 2;
- (b) Provided to the insurer or producer of insurance information that was incomplete or inaccurate; or
- (c) Entered into an insurance transaction that was not based on the recommendation of the insurer or producer of insurance.

Sec. 5. Section 14 of LCB File No. R076-05 is hereby repealed.

Sec. 6. An insurer or provider of insurance is not required to comply with the provisions of this regulation until December 17, 2006.

TEXT OF REPEALED SECTION

Section 14 of LCB File No. R076-05

Sec. 14. Each insurer shall establish and maintain policies and procedures for the manner in which producers of insurance that it employs or with which it has entered into a contract recommend annuities offered by the insurer to persons and periodically review those producers of insurance for compliance with such policies and procedures. The insurer is responsible for the acts of such producers of insurance when the producers of insurance recommend the purchase of an annuity or the exchange of an annuity that results in any additional insurance transaction.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R115-06

The Commissioner of Insurance adopted regulations assigned LCB File No. R115-06 which pertain to chapter 688A of the Nevada Administrative Code on July 5, 2006.

Notice date: 5/2/2006
Hearing date: 6/7/2006

Date of adoption by agency: 7/5/2006
Filing date: 9/18/2006

INFORMATIONAL STATEMENT

A hearing was held on June 7, 2006, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning annuity suitability.

Public comment was solicited by posting notice of the hearing in the following public locations: Division's Carson City Office, Legislative Counsel Bureau, Capitol Building Lobby, Blasdel Building, Carson City Courthouse, State Library, Capitol Press Room, and the Division's Las Vegas Office.

The Division maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

The hearing was attended by 11 individuals. Oral testimony was provided by Van Mouradian and Lou Roggensack, representing the Division. Mr. Fred Hillerby testified on behalf of the American Council of Life Insurers (ACLI). Mr. Mouradian addressed the differences between the Legislative Counsel Bureau (LCB) version and the proposed Division version and testified that the Division did not have a problem with the changes. Mr. Hillerby testified that the ACLI wanted several changes to reflect the National Association of Insurance Commissioners' (NAIC) model language. The Division did not object to the changes recommended. The Division received one written comment on the proposed regulation from The Prudential Insurance Company of America supporting the regulation and had two technical recommendations. Mr. Roggensack testified that their recommendations were addressed in the LCB version of the proposed regulation.

There were several revisions recommended and made to the Proposed Regulation, LCB File No. R115-06, dated June 5, 2006. The revised version of the regulation is attached. The revisions made pertain to the industry requesting NAIC's model language. The Commissioner has issued an order adopting the regulation, as revised, pursuant to the workshop and hearing, as a permanent regulation of the Division.

Based upon the testimony received at the hearing, the proposed regulation is revised as follows:

1. Subsection 1 of section 1 is amended to read as follows:

1. [An insurer shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this section and sections 2, 3, and 4 of this regulation and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this section and sections 2, 3, and 4 of this regulation.] **An insurer either shall provide for or assure that a system is established and maintained to supervise recommendations which is reasonably designed to comply with the provisions of this Chapter and which may be established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this Chapter.**

2. Subsection 2 of section 1 is amended to read as follows:

2. [A producer of insurance shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this section and sections 2, 3, and 4 of this regulation and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this section and sections 2, 3 and 4 of this regulation.] **A producer of insurance either shall provide for a system or adopt a system developed by an insurer to supervise recommendations which is reasonably designed to comply with the provisions of this Chapter. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this Chapter.**

3. A new subsection 9 is added to section 1 to read as follows:

9. An insurer that contracts with a third party pursuant to subsection 3 of this section and that complies with the requirements to supervise in subsection 4 of this section shall have fulfilled its responsibilities under subsection 1 of this section.

4. Section 4 is amended to reflect a change to subsection 3 of section 13 of LCB File No. R076-05 to read as follows:

3. Except as otherwise provided in subsection 4, if an insured is harmed financially because [a managing general agent,] an insurer or a producer of insurance failed to comply with subsection 1 or 2, the Commissioner may require the insurer or producer of insurance to take corrective action.

5. A new section 5 is added to reflect deleting Section 14 of LCB File No. R076-05:

Sec 5. Delete Section 14 of LCB File No. R076-05. [Sec. 14. Each insurer shall establish and maintain policies and procedures for the manner in which producers of insurance that it employs or with which it has entered into a contract recommend annuities offered by the insurer to persons and periodically review those producers of insurance for compliance with such policies and procedures. The insurer is responsible for the acts of such producers of insurance when the producers of insurance recommend the purchase of an annuity or the exchange of an annuity that results in any additional insurance transaction.]

6. Section 5 is renumbered as section 6.

Sec. [5.] **6.** An insurer or provider of insurance is not required to comply with the provisions of this regulation until 90 days after the effective date of this regulation.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: The proposed regulation would require a minimal additional cost to the life insurers that would implement the proposed regulation.
- (b) On the public: None.

The Division may incur some additional expense to enforce the proposed regulation that cannot be measured at this time.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **06.455**
LCB File No. **R115-06**

**REGULATION CONCERNING ANNUITY
SUITABILITY.**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by Nevada Revised Statute (NRS) 233B.061, on the proposed regulation concerning annuity suitability was held before Pamela Mackay, Deputy Commissioner of Insurance, on June 7, 2006, at the Department of Business and Industry, Division of Insurance (Division), in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before the Deputy Commissioner of Insurance on June 7, 2006, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130.

The hearing was attended by 11 individuals. The following provided testimony before the Hearing Officer: Van Mouradian and Lou Roggensack, representing the Division; Fred Hillerby, representing the American Council of Life Insurers (ACLI). The Division received one letter from The Prudential Insurance Company of America (Prudential).

Mr. Mouradian addressed the differences between the Legislative Counsel Bureau (LCB) version and the proposed Division version and testified that the Division did not have any problem with the changes. Mr. Roggensack testified that LCB had addressed the technical issues that Prudential had raised in their letter to the Division regarding this regulation. Mr. Hillerby testified that the ACLI wanted the National Association of Insurance Commissioners'

(NAIC) model language in several sections and presented the changes to the LCB version of this regulation. The Division did not object to his recommendations.

Based upon the testimony received at the hearing, the proposed regulation is revised as follows:

1. Subsection 1 of section 1 is amended to read as follows:

1. [An insurer shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this section and sections 2, 3, and 4 of this regulation and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this section and sections 2, 3, and 4 of this regulation.] **An insurer either shall provide for or assure that a system is established and maintained to supervise recommendations which is reasonably designed to comply with the provisions of this Chapter and which may be established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this Chapter.**

2. Subsection 2 of section 1 is amended to read as follows:

2. [A producer of insurance shall provide for a system to supervise recommendations which is reasonably designed to comply with the provisions of this section and sections 2, 3, and 4 of this regulation and which is established and maintained pursuant to subsections 3, 4 and 5. The system must include, without limitation, a process for maintaining written procedures and a process for

reviewing records which is reasonably designed to detect and prevent violations of the provisions of this section and sections 2, 3 and 4 of this regulation.] **A producer of insurance either shall provide for a system or adopt a system developed by an insurer to supervise recommendations which is reasonably designed to comply with the provisions of this Chapter. The system must include, without limitation, a process for maintaining written procedures and a process for reviewing records which is reasonably designed to detect and prevent violations of the provisions of this Chapter.**

3. A new subsection 9 is added to section 1 to read as follows:

9. **An insurer that contracts with a third party pursuant to subsection 3 of this section and that complies with the requirements to supervise in subsection 4 of this section shall have fulfilled its responsibilities under subsection 1 of this section.**

4. Section 4 is amended to reflect a change to subsection 3 of section 13 of LCB File No. R076-05 to read as follows:

3. Except as otherwise provided in subsection 4, if an insured is harmed financially because [a managing general agent,] an insurer or a producer of insurance failed to comply with subsection 1 or 2, the Commissioner may require the insurer or producer of insurance to take corrective action.

5. A new section 5 is added to reflect deleting Section 14 of LCB File No. R076-05:

Sec 5. Delete Section 14 of LCB File No. R076-05. [Sec. 14. Each insurer shall establish and maintain policies and procedures for the manner in which producers of insurance that it employs or with which it has entered into a

contract recommend annuities offered by the insurer to persons and periodically review those producers of insurance for compliance with such policies and procedures. The insurer is responsible for the acts of such producers of insurance when the producers of insurance recommend the purchase of an annuity or the exchange of an annuity that results in any additional insurance transaction.]

6. Section 5 is renumbered as section 6.

Sec. [5.] **6.** An insurer or provider of insurance is not required to comply with the provisions of this regulation until 90 days after the effective date of this regulation.

RECOMMENDED ORDER OF THE HEARING OFFICER

Based upon the testimony received at the hearing, it is recommended that the proposed regulation regarding annuity suitability, LCB File No. R115-06, be adopted, as amended, as a permanent regulation of the Division.

SO RECOMMENDED this _____ day of June, 2006.

PAMELA A. MACKAY
Hearing Officer

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation regarding annuity suitability, LCB File No. R115-06, be adopted, as amended, as a permanent regulation of the Division.

SO ORDERED this _____ day of _____, 2006.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance