

MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES (DIFS) COMMENTS

The State of Michigan Department of Insurance and Financial Services appreciates the opportunity to provide feedback regarding best practices and compliance challenges associated with Model #275.

1. Observed Practices and Opportunities to Enhance Practices:

a. Training

i. Best Practices

1. **Company Specific Training with Knowledge Checks** – Companies offer specific training for products and require that producers pass a knowledge check before being allowed to sell the products. This training with a test for understanding may encourage a stronger grasp of the product and may result in producers providing better explanations to consumers.
2. **Electronic System Checks for Required Training** – Some companies have automated system checks to ensure that producers have completed all required training prior to approving an annuity application.

ii. Compliance Challenges and/or Confusion

1. It has been observed that agents need further training on how to explain interest accrual and the importance of differentiating between guaranteed and projected figures. In addition, certain annuity products apply distinct interest accruals to the accumulation/account value as well as a specific benefit/rider value. It is important for agents to understand these distinctions and make this clear to the consumer.

b. Supervision Systems

i. Best Practices

1. **Comparison Charts for Replacement Transactions** – Some companies are using charts with information that is required to be completed as part of the application process for an annuity replacement. Some items that are compared are as follows: surrender period, guaranteed rate, charges, benefits, fees, riders, product type, etc. Comparing the data of the existing and new product allows the consumer to easily identify differences between them. It is also a best practice to require that the consumer review, sign and acknowledge their understanding of the differences between the products for replacement transactions.

Consumer Communication Suggestions: The workgroup may want to consider whether a best practice would be to survey consumers after transactions to check understanding and confirm producers complied with required steps. In addition, any consumer communication-related

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best practices should include clear guidance about timing, so it is clear when the consumer should receive information, sign acknowledgements, etc.

ii. **Compliance Challenges and/or Confusion**

1. **Confusion regarding replacement obligations** – It has been observed that some companies are not collecting enough information to compare the proposed and existing product for replacement purposes. While it is a producer obligation to “consider the whole transaction” and take 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” ((Model 275 Section 6A (1) (j)); if the producer is not collecting this information, the company cannot possibly ensure that a recommendation to replace an annuity is in compliance with Model #275. For example,
 - a. In some instances, insufficient information is being collected to determine whether the new product in comparison to the existing product is in the best interest of the consumer.
 - b. When there is more than one product being replaced, the producer must collect information for each product to allow for proper comparison. In one instance, information was collected only for the product with the highest surrender charge.
 - c. Information about whether “the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months” (Model 275 Section 6A (1) (j)(3)) is only being collected for a 36-month period rather than for a 60-month period as required by the Model.
2. **Written Basis for the Recommendation** – The collection and review of the written basis for the recommendation of an annuity varies widely amongst companies. Is the written basis for the recommendation required to be in writing and does the company have to collect and review the recommendation to meet its supervision obligations under Model 275 Section 6C (2)? The following may be compliance challenges.

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- a. Some companies are not collecting the written basis for the recommendation and only require that the producer keep this information in their file.
- b. Companies that have electronic systems sometimes have checkboxes for producers to check regarding the reason for the recommendation in lieu of a written recommendation.
- c. When companies have electronic systems, sometimes the systems only check to ensure that text is included in the field for the written basis for the recommendation, but not that the text in this field is communicating the basis or bases of the recommendation as required by Section 6A (1)(a)(iii). The only way this field is reviewed is if other fields trigger a manual review of the application.
- d. Some companies only collect a written basis for the recommendation on replacement transactions.

3. **Electronic Applications and Scoring Mechanisms** – Companies are using electronic means of scoring applications which appears to be allowed by the rule; however, some of the scoring may not be robust enough to identify applications that are not in compliance with Model 275.

2. Required disclosures and conflicts of interest.

a. Best Practices

- i. **Collection and Review of Appendix A** – Some insurance companies require that Appendix A be submitted with the annuity applications being received and review the form as a part of its best interest determination.

b. Compliance Challenges and/or Confusion

- i. **Collection of Appendix A** – Some insurers are not collecting Appendix A and only require that the producer maintain this form. In some instances, when insurers were asked to provide copies of Appendix A, the company was unable to and additionally were unable to get the producer to provide the form. If an insurer is not collecting and retaining Appendix A, the company must have practices in place to hold agents accountable.