

Florida Modifies Its Annuity Suitability Rule

October 08, 2014

On October 1, the Florida Department of Financial Services (DFS) amended Florida Administrative Code Rule 69B-162.011, "Suitability and Disclosures in Annuity Contracts – Forms Required" (the Suitability Rule). This amendment implemented the July 1, 2013 changes to Florida Statutes section 627.4554, which expanded the applicability of Florida's suitability requirements to sales to all consumers instead of only to those older than 65, and added the following factors for consideration in a suitability analysis: the applicant's financial experience, financial time horizon, and life insurance assets. As amended, the Suitability Rule changed Annuity Suitability Questionnaire (Form DFS-H1-1980) and Disclosure and Comparison of Annuity Contracts (Form DFS-H1-1981) to add questions addressing the additional factors to be considered under the revised statute. The modified forms can be accessed through these links: [Modified Form DFS-H1-1980](#) [Modified Form DFS-H1-1981](#). The modified version of the rule continues to allow insurers to use their own forms, with the written approval of DFS, as long as their forms are not misleading and contain all the information in the DFS's revised forms. Notable changes to the DFS's Forms include [Annuity Suitability Questionnaire \(Form DFS-H1-1980\)](#).

- The previous version of Form DFS-H1-1980 included questions about the applicant's "net worth," defined as "total assets minus total liabilities or encumbrances" and "liquid assets," defined as "financial holdings that can readily be converted into their cash equivalent, *without loss of principal.*" The modified version of the form factors life insurance and annuities into the suitability determination by expressly including "life insurance and annuities" in the definition of "existing assets," and by defining "existing liquid net worth," as "those net assets that can readily be converted into their cash equivalent *without loss of principal after all surrender charges or other deductions have been taken.*"
- The question on the previous version of the form asking "How long do you plan to keep the proposed annuity?" was changed to "How many years from today will you need access to your funds without a penalty?" In addition to addressing the applicant's "time horizon," the rephrasing appears to attempt to confirm that annuity consumers understand the possible penalty associated with prematurely surrendering an annuity.

- Several changes have been made to the consumer's acknowledgment and signatures section including: the old form's language "I have chosen NOT to provide this information at this time" now states "I REFUSE to"; and a set of check boxes was added to ascertain whether the annuity purchase "IS" or "IS NOT" "based on the recommendation of this agent or the insurer."

Disclosure and Comparison of Annuity Contracts (Form DFS-H1-1981)

- Modified Form DFS-H1-1981 continues to require a comparison between the existing annuity contract and the replacement annuity on a variety of attributes, but the modified form also requires additional comparisons, including:
 - Potential Tax Penalty for Surrender/Sale/Exchange/Annuitization (Describe)
 - Investment/Insurance components (Describe)
 - Riders, Features/Cost (Describe)
 - Loss of Benefits or Enhancements if existing contract exchanged? (Describe)
 - Living Benefits (Describe)
 - Limitations on Interest Returns (Describe)
 - Interest Rate Term
 - Participation Term
 - Indexing Method/Term
 - Other Fees (Describe)
- Modified Form DFS-H1-1981 adds the question "Have you surrendered or exchanged an annuity contract in the last 36 months? If yes, provide details."

The modified Rule and Forms become effective ***October 21, 2014***, with no delayed effective date for use of the new forms. Any insurer seeking to use its own previously approved forms should carefully review the revised Forms DFS-H1-1980 and DFS-H1-1981 to ensure its forms contain all the information the revised forms require. The DFS also continued its work on [Proposed Rule 69B-215.090, Florida Administrative Code](#), which sets forth disclosure requirements for certain annuity and life insurance policy surrenders (the "Proposed Rule"). As reported in our [September 8 Legal News Alert](#), the DFS held a rule development workshop on September 26 to take industry comments on the proposed rule. Carlton Fields attended this workshop. At the workshop, DFS stated that:

- The proposed rule is not intended to impose additional regulations on insurers in complying with the requirements of section 627.4553, Florida Statutes, because DFS believes insurers are already complying with this statute.

- Given DFS's understanding that insurers already provide consumers surrendering annuities with written information, DFS did not specify form requirements in the proposed rule because it wants to allow insurers flexibility on the type of form they may use.
- The Office of Insurance Regulation ("OIR") advised DFS that a form filing will not be necessary. However, DFS encourages insurers to confirm that understanding with OIR.
- DFS will consider defining or specifying certain terms in the proposed rule, such as "execution of the surrender check" and "other investment performance guarantees being forfeited." For example, DFS clarified that its definition of "execution" for the proposed rule is "when the customer goes to cash the surrender check."
- DFS does not intend to add a provision for insurers selling variable products stating that compliance with SEC requirements constitutes compliance with the proposed rule.

However, at the workshop, the DFS did not address several other industry concerns regarding the proposed rule, including:

- Whether an insurer will bear any responsibility when the surrender of an annuity was not recommended by an insurance agent.
- What date should be used for the financial information disclosed, given that the information may change daily.
- How the proposed rule will apply to self-appointed life insurance agents, attorneys, and certified public accountants.
- Whether the proposed rule's effective date will be delayed to allow insurance companies time to update their systems.

DFS left open a comment period through Monday, October 6, 2014 for additional industry comments. Once these comments are considered by DFS, it is anticipated that DFS will continue the rulemaking process and publish the proposed rule in the Florida Administrative Weekly. Carlton Fields will continue monitoring developments regarding the proposed rule on surrenders and any possible changes to the implementation of Forms DFS-H1-1980 and DFS H1-1981.

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