

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through V pertaining to the) PROPOSED ADOPTION
Suitability in Annuity Transactions Act)

TO: All Concerned Persons

1. On August 26, 2021, at 10:00 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) will hold a public hearing in the Basement Conference Room of the commissioner's office at 840 Helena Avenue, in Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) no later than 5:00 p.m. on August 18, 2021, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The new rules proposed to be adopted provide as follows:

NEW RULE I PURPOSE (1) The purpose of these rules is to provide:

(a) model forms for mandatory disclosures to consumers prior to the recommendation or sale of an annuity and for documenting certain events at the time of a recommendation or sale of an annuity; and

(b) the process for approving, and certifying compliance with, training courses necessary to educate insurance producers prior to engaging in the recommendation or sale of an annuity.

AUTH: 33-1-313, MCA

IMP: 33-20-805, 33-20-807, MCA

REASON: The 2021 Legislature adopted substantial revisions to the Montana Suitability in Annuity Transactions Act, 33-20-801 *et seq.*, MCA, based on National Association of Insurance Commissioners (NAIC) Model Act No. 275, Suitability in Annuity Transactions. The text of NAIC Model Act No. 275 is available from this webpage: <https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf>. The amendments enacted by the 2021 Legislature direct the insurance department to establish certain model forms and to approve certain training course(s) and provider(s). This proposed rule explains the goals of the new rules which follow. Where these rules cite to the Montana Code Annotated (MCA), it is to the statute effective October 1, 2021.

NEW RULE II MODEL FORMS (1) For purposes of the model forms to be provided by the insurance department under 33-20-805(4), MCA, the commissioner adopts and incorporates by reference Appendices A through C of the National Association of Insurance Commissioners (NAIC) Model Regulation No. 275, Suitability In Annuity Transactions, published Spring 2020, which set forth a model form for an insurance agent or producer's disclosure prior to the recommendation or sale of an annuity, a model form for use when a consumer refuses to provide certain information, and a model form for use when a consumer decides to purchase an annuity that is not based on a producer's recommendation. A copy of Appendices A through C of NAIC Model Act No. 275 may be obtained from the Commissioner of Securities and Insurance, Office of the Montana State Auditor, at 840 Helena Ave., Helena, MT 59601.

(2) As used in Appendix A, "cash compensation" has the same meaning set forth in the definition found at 33-20-804, MCA.

(3) As used in Appendix B, "consumer profile information" has the same meaning set forth in the definition found at 33-20-804, MCA.

AUTH: 33-1-313, MCA

IMP: 33-20-805, MCA

REASON: The amendments adopted by the 2021 Legislature contemplate three forms to make certain disclosures or statements required by the Act. Through this rule, CSI has elected to adopt by reference the forms provided with NAIC Model Act No. 275, titled as Appendices A through C, to maintain consistency both with other states, and for insurers and producers who may have already updated or developed forms to comply with the Model Act.

NEW RULE III GUIDELINES FOR APPROVAL OF TRAINING (1) The commissioner will approve training on the subject of the suitability of annuities using the process for review and approval of continuing education courses set forth at 33-17-1201 et seq., MCA.

(2) A training course intended to fulfill the requirements of 33-20-807, MCA, must be submitted for review to and recommendation by the Continuing Education Course Advisory Council established at 33-17-1204(2), MCA. Except as stated in (3), for purposes of this rule, the commissioner adopts and incorporates by reference ARM 6.6.4201 through 4213 (as in effect on [date of adoption of NEW RULE III]), which sets forth the rules for Continuing Education Program for Insurance Producers and Consultants. A copy of the rules may be obtained from the Commissioner of Securities and Insurance, Office of the Montana State Auditor, at 840 Helena Ave., Helena, MT 59601.

(3) The commissioner's adoption and incorporation by reference of the rules identified in (2) is done with the following exceptions and additions specific to the training requirements of 33-20-807, MCA:

(a) The definition of "Biennial cycle" found at ARM 6.6.4202(3) does not apply to this rule.

(b) In addition to the rules for course submissions found at ARM 6.6.4203, the submission must demonstrate the following:

- (i) In the case of any submission for a one-time, four-credit course:
 - (A) that the course contains information on at least the following topics:
 - (I) the types of annuities and various classifications of annuities;
 - (II) identification of the parties to an annuity;
 - (III) how product-specific annuity contract features affect consumers;
 - (IV) the application of income taxation of qualified and nonqualified annuities;
 - (V) the primary uses of annuities; and
 - (VI) appropriate standard of conduct, sales practices, replacement, and disclosure requirements.
 - (B) that the course does not include any information on marketing, sales techniques, or the specific aspects of a particular insurer's products.
- (ii) In the case of any submission for a one-time, one-credit course:
 - (A) that the course contains information on at least appropriate sales practices and replacement and disclosure requirements; and
 - (B) that the course does not include any information on marketing, sales techniques, or the specific aspects of a particular insurer's products.
- (c) The following revisions apply to the rule for nonresident licensees found at ARM 6.6.4208:
 - (i) The requirements for nonresident licensees found at ARM 6.6.4208(1) do not apply unless the home state or designated home state in which the nonresident licensee is licensed has adopted a law substantially similar to the Montana Suitability in Annuity Transactions Act found at 33-20-801 et seq., MCA.
 - (ii) In addition to the requirements for nonresident licensees found at ARM 6.6.4208(2), the licensee shall submit to this state proof of course completion demonstrating compliance with 33-20-807, MCA.
 - (d) In addition to the conditions for nonresident sponsoring organizations found at ARM 6.6.4213, reciprocity may only be afforded for courses intended to fulfill the requirements of 33-20-807, MCA, if the resident state has adopted a law substantially similar to the Montana Suitability in Annuity Transactions Act found at 33-20-801 et seq., MCA.
 - (e) The rule concerning extensions found at ARM 6.6.4214 is not adopted.

AUTH: 33-1-313, 33-20-807, MCA

IMP: 33-20-807, MCA

REASON: The law requires that the commissioner approve education courses and an education provider that will satisfy the training requirements set forth at 33-20-807(2)(a) through (f), MCA. This proposed rule adopts and incorporates by reference the existing standards for approving insurance producer education courses and providers set forth at 33-17-1201, et seq., MCA, and in rule at ARM 6.6.4201 et seq., with appropriate modifications and exclusions specific to the Montana Suitability in Annuity Transactions Act. This proposed rule, at (3)(a), does not adopt the definition of "biennial cycle" because the training requirements under the Act are one-time only; this rule, at (3)(b), adds to the general course content requirements of traditional continue education requirements the specific topics set forth in statute at 33-20-807(2)(c) and (d), MCA; this rule, at (3)(c) and (d), modify both the nonresident licensing requirements and nonresident sponsoring

organization requirements to ensure reciprocity is granted, but also limited, to other states that have adopted a substantially similar version of the NAIC Model Act No. 275; and this rule, at (3)(e), does not adopt the rule regarding extensions because the statute provides time limits for completion of training at 33-20-807(2)(a)(ii) and (f), MCA.

NEW RULE IV STANDARDS FOR INSURER VERIFICATION (1) An insurer's obligation to verify that a producer has completed the training requirements of 33-20-807, MCA, can be accomplished by either:

(a) obtaining certificate(s) of completion of a commissioner-approved training course; or

(b) obtaining reports from a database system that either reflects on the face of the report information establishing that the training includes at least the requirements set forth in [NEW RULE III], as applicable, or can be queried to provide that information if requested by the commissioner.

AUTH: 33-1-313, MCA

IMP: 33-20-807, MCA

REASON: An insurer is required to verify required training before permitting the producer to sell its annuity product per 33-20-807(2)(e), MCA. This proposed rule provides what information is considered necessary in order for an insurer's verification of the training requirements of its producers to be satisfactory to the commissioner.

NEW RULE V ALTERNATIVE SATISFACTION OF TRAINING REQUIREMENTS (1) A producer may submit a written request to the commissioner to evaluate a training course or courses with components substantially similar to those required, and prohibited, by 33-20-807(2), MCA.

(2) The written request must:

(a) be made within 12 months of the producer attending the course or courses to be considered;

(b) be accompanied by a time-stamped syllabus or similar material that:

(i) shows the content of the course or courses; and

(ii) establishes the minimum length of training under 33-20-807(2)(b), (f)(i), or (f)(ii), MCA, as applicable;

(c) include a narrative description, annotated syllabus, or similar cross-reference showing where each of the topics required by [NEW RULE III(3)(b)], as applicable to the producer, were addressed in the course or courses; and

(d) contain a sworn statement that the course or courses did not include any information on marketing, sales techniques, or the specific aspects of a particular insurer's products.

(3) The commissioner will approve or deny the request within 60 days.

AUTH: 33-1-313, MCA

IMP: 33-20-807, MCA

REASON: This proposed rule provides a mechanism for producers to request approval of alternate courses in satisfaction of the training requirements as provided for under 33-20-807(2)(g), MCA, and a timeline for approval by the commissioner.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., September 3, 2021.

5. Kirsten Madsen, legal counsel for CSI, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 above or may be made by completing a request form at any rules hearing held by CSI.

7. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on July 16, 2021.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Kirsten K. Madsen
Kirsten K. Madsen
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State July 27, 2021.