

NYS Regulation 187 (“Suitability and Best Interests in Life Insurance and Annuity Transactions”)

Amendment to 11NYCRR 224

Effective August 1, 2019

https://www.dfs.ny.gov/docs/insurance/r_finala/2018/rf187a1txt.pdf

Purpose: The amendment clarifies the duties and obligations of producers (and B/Ds, Agencies, and Insurers) when making recommendations to consumers with respect to insurance and annuity policies delivered in NYS to help ensure that a transaction is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer at the time of the transaction.

Applicability: Any transaction or recommendation to purchase or replace an insurance or annuity contract issued or delivered in New York State (new or in-force).

SUMMARY OF KEY ACTIVITIES TO FOCUS ON IN PREPARATION:

- **SUITABILITY**
 - Maintain and/or enhance your Suitability process for Annuities and Insurance sales

- ***DUE DILIGENCE***
 - Perform ongoing due diligence of your Annuity and Insurance product shelf. Document rationale, justification, and positioning for each product.
 - Train your Advisors (and Suitability teams) on approved products and ensure they understand the benefits and risks for each product as it relates to various consumer circumstances.
 - Monitor compensation. Identify, eliminate or mitigate conflicts of interest that may arise from discrepancies in compensation paid to Financial Advisors for Annuity and Insurance sales. Ensure that compensation does not influence the recommendation to the customer.

- ***DOCUMENT***
 - Make sure you have a standard process for your Advisors to document their rationale for all annuity & insurance recommendations, including the suitability

review with the customer, research on available product options, and reasoning for the final recommendation.

- Document fee and compensation comparisons for recommended products.
- Update and maintain the Standard Operating Procedures for your Suitability program, including secondary review of transactions and recommendations.

- **DISCLOSE**

- Inform the customer of relevant features of the product, both positive and negative.
- It's ok to have a limited set of carriers and products on your shelf (due diligence rationale is important). Make sure to disclose to customers the limited universe and arrangements with selected carriers.
- Fee comparisons should be provided to the client when similar products from the same carrier are available (i.e. a fee-based and a commission-based version). This may also include disclosure of Advisor compensation structures.

IN DETAIL: RESPONSIBILITIES (Paraphrased from Insurance Regulation 187)

I. RESPONSIBILITIES OF THE ADVISOR (“Producer”):

1. The Producer’s recommendation for an insurance or annuity transaction has to be:
 1. **SUITABLE:** Producer shall have *reasonable grounds for believing that the recommendation is suitable* for the consumer on the basis of the facts disclosed by the consumer as to the consumer’s investments and other insurance policies or contracts and as to the consumer’s financial situation and needs, including the consumer’s suitability information.
 2. **BEST INTEREST:** *Producer shall act in the best interest of the consumer.* (See page 3 below for definition and requirements.)
2. At the time of recommendation, the Producer must:
 1. **DISCLOSE** to the consumer in a reasonable summary format all relevant suitability considerations and product information, both favorable and unfavorable, that provide the basis for any recommendations;
 2. **DOCUMENT:**
 - the basis for any recommendation made, subject to the facts and analysis to support that recommendation
 - the consumer’s refusal to provide suitability information, if any
 - that, if an annuity purchase or replacement is *not* recommended and a consumer decides to enter into an annuity purchase or replacement on their own, that the transaction that is not based on the Producer’s recommendation.

II. RESPONSIBILITIES OF THE BROKER/DEALER or AGENCY:

1. **SUPERVISION:** The B/D must establish and/or maintain a supervision program system that is reasonably designed to ensure their producers' compliance with this Regulation.
2. **TRAINING.** The B/D is responsible for ensuring that every insurance producer recommending the insurer's annuity contracts is adequately trained to make the recommendation.
3. **DISCLOSURE.** A B/D may limit the range of products its Producers can recommend to consumers based on an affiliation agreement with particular carriers. The B/D must prominently disclose to each consumer in writing prior to a recommendation the nature of the agreements and the circumstances under which the producer will and will not limit the recommendations. The disclosure is insufficient if it merely states that the producer may limit recommendations without specific disclosure of the extent to which recommendations are, in fact, limited.
4. **DOCUMENTATION & PROCEDURES.** B/D must establish, maintain, and audit a system of supervision for:
 - Collecting a consumer's suitability information
 - Documenting and disclosing of the basis for any recommendations consistent with the best interest of the consumer
 - Auditing and reviewing recommendations to monitor producer's compliance with the regulation's requirements
 - Identifying recommendations with the greatest risk of violations
5. **FEE COMPARISON:** Where a producer is authorized to offer different versions of a carrier's product, one with a fee-based structure and one with a commission-based structure, the producer shall provide to the consumer a comparison showing the differences between the products. This may also include information related to the differences in the producer's compensation structure for the different versions of the product.

III. What does "best interest" mean in relation to Reg 187?

Best interest means that the recommendation to the consumer is:

1. Based on an evaluation of the suitability information of the consumer.
2. Reflects the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use under the same circumstances.
3. The producer's receipt of compensation cannot influence the recommendation.
4. The transaction is suitable.

5. The consumer has been reasonably informed of various features of the insurance or annuity contract and potential favorable and unfavorable consequences of the sales transaction, such as the:

- Surrender period and surrender charge
- any secondary guarantee period
- equity-index features
- availability of cash value
- potential tax implications if the consumer sells, modifies, surrenders, lapses or annuitizes the policy
- death benefit
- mortality and expense fees, cost of insurance charges, investment advisory fees, policy exclusions or restrictions, potential charges for and features of riders
- limitations on interest returns, guaranteed interest rates, insurance and investment components, market risk
- any differences in features among fee-based and commission-based versions of the policy
- the manner in which the producer is compensated for the sale and servicing of the policy

IV. Suitability: Relevant information at the time of the Insurance or Annuity recommendation:

1. Age
2. Annual Income
3. Financial situation & needs, including the financial resources to fund the policy
4. Financial Experience
5. Financial Objectives
6. Intended use of the policy, including any riders
7. Time horizon, including duration of any existing liabilities or obligations
8. Existing assets, including investments and insurance
9. Liquidity needs
10. Liquid net worth
11. Risk tolerance
12. Willingness to accept non-guaranteed elements of the policy (variable premium, cash value, death benefit, fees, etc.)
13. Tax status
14. Any other relevant information in the reasonable judgement of the producer



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