

IMPORTANT POINTS OF THE NYDFS AMENDMENTS TO REGULATION 187 (11 NYCRR 224)

SUITABILITY AND BEST INTEREST STANDARD

1. The regulatory amendments extend and enhance the suitability provisions of regulation 187 to all life insurance products (from annuities only) and add a “best interest of the consumer” standard to all life insurance and annuity sales.
2. The regulation’s provisions apply at any point from the sale of the product as well as to any “transaction” that occurs on an in-force product. This transaction may not only be a purchase, but a replacement, modification or election of a contract provision with respect to an in-force policy.
3. The regulation’s suitability and “best interest” requirements are triggered whenever a producer makes a “recommendation”, which is defined as “one or more statements or acts by a producer that may reasonably interpreted by a consumer to be advice and that results in a consumer entering into or refraining from entering into a transaction in accordance with that advice or is intended by the producer to result in a consumer entering into or refraining from entering into a transaction.”
4. In all transactions where the producer makes a recommendation, the producer must act “in the best interest of the consumer.” This means:
 - recommendation is based upon an evaluation of 13 types of information from the consumer and the recommendation is reflects the “care, skill, prudence and diligence that a prudent person familiar with such matters would use under the circumstances without regard to the financial or other interests of the producer.”
 - the transaction must be suitable
 - the producer must have a reasonable basis to believe that the consumer has been informed of all potential consequences of the transaction (examples listed in the regulation)
 - the consumer would benefit from certain features of the policy
 - the particular policy as a whole, the underlying accounts to which funds are allocated, the transaction and riders are suitable
 - in the case of replacements, the replacement is suitable based on several factors

5. The producer must have a reasonable basis to believe that the consumer has the financial ability to meet the financial commitment under the policy.
6. A producer shall not state or imply to the consumer that a recommendation to enter into a transaction is part of financial planning, financial advice, investment management or related services unless the producer has a specific certification or professional designation.
7. Any requirement applicable to a producer shall apply to every producer in the transaction, regardless of whether the producer has any direct contact with the consumer.
8. The producer must document all aspects of compliance with the regulation.