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May 5, 2021

**BULLETIN NO. 7-2021**

**TO: ALL INSURANCE COMPANIES AND PRODUCERS SELLING ANNUITY PRODUCTS IN THE STATE OF ARKANSAS**

**FROM: ARKANSAS INSURANCE DEPARTMENT**

**SUBJECT: ARKANSAS INSURANCE DEPARTMENT RULE 82 ANNUITY "BEST INTEREST" TRAINING REQUIREMENTS**

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The Arkansas Insurance Department has adopted changes to its Suitability in Annuities Rule 82. This new rule, issued December 29, 2020, requires producers to put the needs of their clients first and to act in their clients' best interest. Changes to this rule are effective as of July 8, 2021, except for the new continuing education requirements. As part of the new regulations, Rule 82 requires insurance producers to complete a one-time training course designed to educate producers on, among other items, the primary uses of annuities, appropriate sales practices, and replacement and disclosure requirements.

Beginning in 2022, a producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer who engages in the sale of annuity products shall complete a one-time training course approved by the Department and provided by a continuing education provider approved by the Department. The minimum length of the training shall be sufficient to qualify for at least four Continuing Education credits as required by Rule 82 § 7(B)(6). After January 1, 2022, individual producers may not engage in the sale of annuities until the annuity training course required under rule has been completed.

The transcripts of Arkansas resident insurance producers who take and pass such a course will reflect that the course was an "annuity products-best interest" course and carriers may rely on this when

making producer appointments. Approved classes will have the words “best interest” included in the title, will have a best interest course group notation, and must have been taken after January 1, 2021. Similar courses with the same course group approved by other state insurance departments will be deemed to meet Arkansas’ education course requirements.

Insurance producers are not required to notify AID that they have completed the annuity suitability education requirement. Annuity course credits count towards the agent’s 24-hour CE requirements for their life-license. An insurance producer’s failure or lack of ability to complete the annuity suitability education course will not affect their license. The education requirement must be completed even if an insurance producer is no longer required to complete continuing education. Companies may rely on a resident insurance producer’s individual transcript when making producer appointments.

Although AID will keep records as to resident insurance producers, it will not record completion of the annuity suitability education courses for non-resident insurance producers. After January 1, 2022, it will be the responsibility of each company to verify that its appointed insurance producers have completed an annuity suitability course including the new best interest standards before the producers may sell its annuity products in Arkansas.

Any questions regarding this Bulletin should be directed to [insurance.licensing@arkansas.gov](mailto:insurance.licensing@arkansas.gov) at the Arkansas Insurance Department or by phone at 501-371-2600.

  
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ALAN MCCLAIN  
ARKANSAS INSURANCE COMMISSIONER

5-5-21  
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DATE

## **BEST INTEREST EDUCATION REQUIREMENT ARKANSAS**

### **Requirement**

All agents (and recommenders) are required to take the following continuing education classes prior to soliciting, negotiating or selling an annuity to an Arkansas resident:

- a. the state- approved four-hour annuity suitability course
- b. a one-hour Best Interest Course
- c. FCSLA's product-specific training

### **Date Required**

If you have already taken the basic 4-hour annuity suitability course as well as FCSLA's product-specific course prior to June 29, 2021, you have until December 29, 2021 to take the Best Interest Course. You may not solicit, negotiate or sell an annuity in Arkansas (or to a Arkansas resident) until you have completed the Best Interest Course by the effective date.

If you did not take the basic 4-hour annuity suitability course prior to June 29, 2021, you must take the 4 hour annuity course, the Best Interest Course and FCSLA's product-specific training prior to soliciting, negotiating or selling an annuity.

### **Proof of Training**

Agents will be required to submit proof that they have completed the required training before FCSLA can accept a new annuity application. This is a one-time requirement (we will keep the certificate of completion on file for subsequent sales).

### **Available Online Courses**

The following are some available online ANNUITY BEST INTEREST course providers (there are numerous other providers, these are some of the more well-known providers):

AD BANKER: [www.adbanker.com/continuingEducation.aspx](http://www.adbanker.com/continuingEducation.aspx)

KAPLAN: [www.kaplanfinancial.com](http://www.kaplanfinancial.com)

WEB CE: [www.webce.com](http://www.webce.com)

INSURANCE STUDY.COM: [www.insurancestudy.com](http://www.insurancestudy.com)

### **Best Interest Rule**

The Arkansas Best Interest Rule can be found in its entirety on FCSLA's Producers Page under the Best Interest section. All producers are expected to review the rule and all requirements under the rule. Please also see the attached summary.

### **Questions**

Please direct any questions with regard to the new Best Interest Rule to National Sales Manager, Paul Smithers (800) 464-4642 ext. 1018 or Compliance Officer, Karen Visocan ext. 1050.

## **PRODUCER AND RECOMMENDER BEST INTEREST TRAINING MEMO**

In February 2020, the National Association of Insurance Commissioners (NAIC) approved its Suitability in Annuity Transactions Model Regulation (#275) (the “Best Interest Regulation”). The Best Interest Regulation requires that all annuity recommendations by producers and insurers meet a new “**best interest**” standard. Many states have enacted, or are in the process of enacting, Best Interest Regulations. A complete list of states with Best Interest Regulations can be found on the Producers Page of the FCSLA website.

### **BEST INTEREST STANDARD**

For the past 10+ years, most state laws have included a “suitability” standard for annuity sales. However, under the new NAIC model regulation (and state laws adopting it), insurance producers are now held to a higher, “best interest” standard. Under this standard, you must “exercise reasonable diligence, care, and skill” when recommending an annuity and shall act in the best interest of the consumer, under the circumstances known at the time the recommendation is made, without placing your or FCSLA’s financial interest ahead of the applicant’s interests. Strictly following the obligations of care, disclosure, conflict of interest, and documentation detailed in the model regulation and state regulations will help ensure you are deemed to have acted in the consumer’s best interest when soliciting, selling or negotiating a product.

To satisfy the best interest obligation, you must satisfy the following four obligations: 1) reasonable diligence, care and skill; 2) disclosure; 3) conflict of interest; and 4) documentation. To satisfy the four obligations, when making a recommendation, you must:

- Know the potential member’s financial situation, insurance needs and financial objectives;
- Be knowledgeable about the available product options that can be recommended to the applicant;
- Have a reasonable basis to believe the option/product you recommend effectively addresses the applicant’s financial situation, insurance needs and financial objectives;
- Communicate the basis of the recommendation to the applicant;
- Disclose your role in the transaction, your compensation (and the role of any other producer receiving compensation for the transaction), and any material conflicts of interest; and
- Document, in writing, any recommendation you make and the justification for such recommendation.

Furthermore, as an insurer, FCSLA is required to establish and maintain a system to supervise your recommendations to ensure that the insurance needs and financial objectives of the applicants are effectively addressed. The new Best Interest Regulations prohibit FCSLA from issuing an annuity product to a consumer unless we have a reasonable basis to believe it satisfies the applicant’s insurance needs and financial objectives. We are also required to maintain compensation systems that will not conflict with the best interest of our members and applicants.

## Your Obligations

### 1. Reasonable Diligence, Care, and Skill

Pursuant to the Best Interest Regulations, when recommending an annuity, you must consider the applicant's financial situation, insurance needs, and financial objectives. In order to do this, **reasonable efforts** must be made to obtain consumer profile information from the applicant before making a recommendation by completing the Annuity Suitability Questionnaire (the "Suitability Questionnaire"). You must use the information from the Suitability Questionnaire to determine whether your recommendation addresses the applicants' financial situation, insurance needs, and financial objectives, including their age, income, assets and liabilities, financial experience, objectives, time horizon, use of the annuity, liquidity needs, risk tolerance, and tax status. Due to the importance of the Suitability Questionnaire in determining suitability, FCSLA may refuse to approve an annuity sale if the Suitability Questionnaire is not completed and we can not make a reasonable determination that the product is in the best interest of the applicant.

Additionally, FCSLA is required to track producers' (and recommenders') use of Forms B and C (the waiver of completing the Suitability Questionnaire). Best Interest Regulations require FCSLA to establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information through applicant/member surveys, telephone calls and other methods.

Furthermore, in order to best advise your client/ the applicant, you must be familiar with the annuity options available to the applicant. You should be familiar with FCSLA products from your mandatory FCSLA product-specific training; however, if you have any questions about our products, please contact National Sales Manager, Paul Smithers before soliciting the sale of an FCSLA annuity product. Of the annuities you are authorized and licensed to sell, you must have a reasonable basis to believe the applicant would benefit from the annuity and its features (e.g. annuitization, death or life benefit, etc.) You must also communicate the reasons for your recommendation to the applicant (and to FCSLA if there is a question regarding the suitability of the proposed annuity). When exchanging or replacing an annuity, you must consider the whole transaction, factoring in surrender charges, commencement of a new surrender period, loss of existing benefits, increased fees, and other exchanges or replacements made within the previous five years. The new product must **substantially benefit** the consumer in comparison to the replaced product for its duration.

### 2. Required Forms and Disclosures

The Best Interest Regulation requires use of specific disclosure forms. These forms are found on the Producer Page of the FCSLA website. These forms must be signed at the time of the solicitation. You must keep a copy, give one to the applicant and send one in with the completed application. If you have any questions regarding the forms and the information you must complete on the forms, please contact Paul Smithers, FCSLA National Sales Manager Paul Smithers.

### 3. Conflicts of Interest

Pursuant to the Best Interest Regulations, you are required to disclose to your client your role in the transaction, your compensation (and the role of any other producer receiving compensation for the transaction), and any material conflicts of interest. A material conflict of interest is defined as “a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.” Cash and non-cash compensation are not considered to be material conflicts of interest (though the regulations do impose restrictions on certain types of compensation and incentives FCSLA can offer). An example of a material conflict of interest (provided by the NAIC) is if a producer has a spouse, partner or a close relative who works as a senior executive for a particular insurer. If you have ANY question as to whether you have a material conflict of interest, or if you actually have a material conflict of interest, you must contact National Sales Manager, Paul Smithers to report the conflict or discuss any questions you have.

### 4. Your Recordkeeping

You must maintain records of the information you collect from your clients; disclosures made to your clients, including summaries of oral disclosures; and other information used in making the recommendations that were the basis for any sales. You must keep these records for seven years after the annuity transaction is completed (unless notified by FCSLA that your state requires a lesser time).

### Producer Training

Like the original annuity suitability regulation, the Best Interest Regulation has an agent training requirement. Please see the attached training summary for specifics regarding the requirements. In addition to the state-mandated Best Interest course, all producers and recommenders must read and understand this Best Interest Training memo. If you have any questions about any content in this memo, please contact National Sales Manager, Paul Smithers (1-800-464-4642 ext. 1018).

### Conclusion

Potential consequences of non-compliance with the new requirements include, but are not limited to, regulatory investigations and enforcement actions (fines, loss of license, etc.). As a result, you should:

- fully understand the Best Interest requirements and how they apply to your sales practices so you fully comply with the requirements;
- evaluate your documentation process and ensure that the Best Interest documentation requirements are met;
- identify and eliminate (or mitigate if allowed) all conflicts of interest. If you have **any** question as to whether a material conflict exists, or if a material conflict exists that can't be eliminated, contact Paul Smithers, FCSLA National Sales Manager for assistance; and
- continue to adhere to FCSLA Advertising Guidelines and make sure all advertisements are reviewed by the Home Office BEFORE being published.