

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.