



Department of Business Regulation

Insurance Division

1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

Insurance Bulletin Number 2021-1

Annuity and Long Term Care Producer Training

This Bulletin replaces Insurance Bulletin Number 2011-2.

Both the Long Term Care statute and the Annuity Suitability regulation provide for substantive training of producers prior to the sale, solicitation or negotiation of long term care insurance or annuity contracts. The Long Term Care requirements first became effective in 2007 and Rhode Island has been following a “good faith compliance” standard as outlined in Insurance Bulletin 2007-10. Insurers and producers should follow the requirements of this bulletin for compliance with the Long Term Care training requirements of R.I. Gen. Laws § 27-34.2-21. The Annuity Suitability requirement first became effective 02/01/2006. The Annuity training requirements were modified in December 2020, see Part 1.7 of 230-RICR-20-25-1.

Long Term Care

In order to sell, solicit or negotiate long term care insurance in Rhode Island a properly licensed insurance producer must take a one time 8-hour training course. Thereafter, all producers selling, soliciting or negotiating long-term care insurance must take a 4-hour ongoing training course every twenty-four months. Both the 8-hour and the 4-hour courses must be pre-approved by the Department or approved by a state with substantially similar training requirements. Approved Long Term Care Approved Training Courses can be found via a “Lookup Search” on the Department’s website. Courses taken prior to June 1, 2011 are governed by the provisions of Insurance Bulletin 2007-10 and do not have to be pre-approved by the Department.

Annuity Suitability

The Rhode Island Insurance Division has adopted changes to its Annuity Suitability Regulation, 230-RICR-20-25-1. This new rule 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 April 1, 2021.

Part 1.7 of the new Rule requires substantive training of a properly licensed insurance producer. These training courses must be approved by the Department under the course group “Annuity Suitability-Best Interest” and approved courses can be found via a “Lookup Search” on the Department’s website. A producer who has already taken the former annuity suitability training must, within six (6) months of April 1, 2021 take either the new “Annuity Products-Best Interest” one (1) time four (4) credit training course or a one (1) time one (1) credit training course in order to sell, solicit or negotiate annuities in Rhode Island. The availability of the one (1) time one (1) credit training course will expire on September 30, 2021.

The Department has received inquiries as to whether it would permit producers to complete this required training prior to the new Rule’s effective date of April 1, 2021. Yes, the Department has approved the new “Annuity Products-Best Interest” courses in advance of the April 1, 2021 effective

date, and approved courses taken before April 1, 2021 will be deemed taken after April 1, 2021 for purposes of compliance with the regulation.

The Department notes carriers have previously relied on the effective date of the regulation to determine whether an appointed producer has met the substantive training requirements for sale of certain insurance products. It is possible that if a producer completes a training course prior to the regulation's effective date that a carrier may have difficulty affirming whether the new "best interest training course has been completed by producers, and that confusion could require carriers to ask producers to repeat training courses prior to appointments or prior to accepting sales as a result. Therefore, the Department is revising this Bulletin to inform carriers, producers, and other interested parties that "Annuity Products-Best Interest" courses approved by the Department for continuing education meets the substantive training requirements as outlined in the amendments to 230-RICR-20-25-1.7(B)(6). Providers of these courses are required to submit completion of course credits electronically via the Department's State Based Systems electronic platform and the transcripts of producers will reflect the following minimum data: date taken, course group ("Annuity Products-Best Interest"), course name, provider name, and course credits. Carriers may rely on a producer's individual transcript when making producer appointments.

Finally, if a producer takes a course approved by another state that has adopted the NAIC Best Interest suitability updates, that will likely count for purposes of meeting this Rhode Island regulation's requirement. If a producer completes an approved annuity suitability course in a state other than Rhode Island, it may not be necessary to also take the Rhode Island approved course. The annuity suitability course completed must comply with state regulations for annuity suitability training in the state in which it was given. Rhode Island will accept any course approved by a state that the NAIC has identified as having adopted the revised annuity regulation. A listing of those states can be found at the at the Suitability Model Implementation Tracking Chart appended to the end of the model regulation available on the NAIC website under the Model Laws, Regulations and Guidelines on the NAIC's website at www.naic.org (note that the listing is not always current) or may be accessed by the hyperlink in this bulletin (<https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf>) .

Evidence of Compliance with Long Term Care and Annuity Suitability

Individual producers are required to maintain records of the completed course. Insurers are required to monitor compliance and assure that all persons selling, soliciting or negotiating long term care and/or annuity products are in compliance with the substantive training requirements. Compliance with substantive training requirements will be verified through market conduct examinations and random audit of licensees. The Department does not compile information regarding specific courses completed by individual producers. Insurers should therefore confirm this information directly with their appointed producer.

Questions concerning these procedures should be directed to (401) 462 9520, prompt #2 or DBR.InsLic@dbr.ri.gov.

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Superintendent of Insurance

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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.