Revisions to New York's Proposed Best Interest Standard for Life Insurance and Annuities

May 10, 2018

On April 27, 2018, the New York Department of Financial Services ("NYDFS") issued a substantially revised proposed amendment to Regulation 187 that adopts a "best interest" standard in the sale of life insurance and annuities. The revisions were made after the 60-day public comment period for the earlier proposed amendment, which was issued on December 27, 2017.

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The proposed revision continues to apply a best interest standard to most recommendations regarding insurance products, and makes some significant changes to the original rule, including:

- Adding additional details around the requirements of the best interest standard
- Establishing enhanced disclosure and oversight requirements, including specific disclosure requirements for captive agents
- Providing a series of clarifications on the scope of suitability requirements for particular transactions.

While the revised rule remains subject to an additional 30-day comment period, Superintendent Maria T. Vullo's remarks suggest that it is unlikely to undergo further substantial changes. In a press release accompanying the revised rule, Superintendent Vullo noted that the new proposal "allows an appropriate period of time for regulated entities to review the rule before it becomes final and to put in place protocols for ensuring these important consumer protections." The rule is set to become effective on March 1, 2019 for annuities and September 1, 2019 for life insurance. Its major points include:

- **The Best Interest standard remains fundamentally unchanged for both annuity and life insurance products.** Despite objections from industry groups during the public comment period, the new proposed rule continues to require agents or, where no agent is involved, the insurer itself, to act "in furtherance of a consumer's needs and objectives." and with the "care, skill, prudence and diligence necessary" in the circumstances. The revised rule:

- Forbids consideration of the financial or other interests of the agent, insurer or any party; only the consumer's best interests may be considered.

- Applies to all sales of life insurance and annuity products, including in the context of retirement planning, when recommendations are made prior to the sale of an insurance product, and during the servicing of the product for the consumer.

- Further clarifies that it applies to all producers who participate in making a recommendation, even if a producer has no direct contact with the consumer.

- **Insurers must maintain a "system of supervision."** In addition to new standards for agents, the revised rule also raises the bar for insurers themselves, requiring that companies "establish, maintain, and audit a system of supervision" for compliance with the best interest standard. Such a system needs to meet a number of requirements, including:

  - Documentation of recommendations regarding sales transactions involving the insurer's products and the suitability rationales of those recommendations

  - Review of complaints regarding recommendations that fail to meet the best interest standard

  - Avoiding incentivizing producers to make recommendations that are not in the best interests of the consumer

  - Conducting contemporaneous review and audit of recommendations to ensure compliance with the new rule.

- **New requirements for "captive" agents.** In a significant revision from the prior version, the new rule permits agents affiliated primarily with a particular insurer to recommend only the products of that insurer. However, before making any recommendation, captive agents will be required to prominently disclose to each consumer in writing their affiliation with the insurer and the circumstances under which the producer will and will not limit his or her recommendations to a consumer because of the producer's captive arrangement with one or more insurers.

- The revised proposed rule requires the Superintendent to approve of the form of these disclosures. It is not enough for disclosures to merely state that the producer may limit recommendations. Instead, the agent must specifically disclose the extent to which recommendations are, in fact, limited, and must "adhere to the conditions in the disclosure with each consumer."

- **Marketing materials are not covered.** Clarifying an ambiguity in the prior version, NYDFS specified that the best interest rule does not cover general marketing or educational information regarding insurance or other financial products.

- **Certain transactions exempted.** NYDFS also added certain exemptions from the rule, including:

  - Contracts used to fund terminating employee pension plans or to assume liability of certain segments of ongoing plans, such as for terminated vested participants, or existing accrued benefits for currently active participants

  - Any corporate or bank-owned policy in which all benefits under the policy are payable to the corporate or bank policy owner

  - Any credit life insurance sold on a group basis and in compliance with Insurance Regulation 27A; and

  - Any life settlement contract.

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Please do not hesitate to contact us with any questions.

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