

Suitability in Annuity Transactions Model Regulation (#275)

Suggested Revisions

April 27, 2018 Comment Deadline

Revised 7-26-18

Title	
Suitability in Annuity Transactions Model Regulation	
American Council of Life Insurers (ACLI)	Suitability <u>Standard of Conduct</u> in Annuity Transactions Model Regulation
Consumer Federation of America (CFA) and Center for Economic Justice (CEJ)	Standards of Consumer Care for Recommendations, Suitability in <u>Life Insurance and</u> Annuity Transactions Model Regulation
Section 1. Purpose	
A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.	
ACLI	A. The purpose of this regulation is to require <u>producers and</u> insurers, <u>where no producer is involved</u> , to establish a system to supervise <u>act in the best interest of the consumer without placing the financial interests of the producer, or insurer where no producer is involved, ahead of the consumer when making</u> recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving of annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

<p>Industry Coalition (Association for Advanced Life Underwriting (AALU), The Committee of Annuity Insurers (CAI), Financial Services Institute (FSI), Indexed Annuity Leadership Council (IALC), Insured Retirement Institute (IRI), and National Association of Insurance and Financial Advisors (NAIFA))</p>	<p>A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations <u>made by producers, or by insurers where no producer is involved</u>, to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed <u>are suitable and in the best interest of consumers</u>.</p>
<p>Iowa Insurance Division (IID)</p>	<p>A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers <u>[in their best interest/that are suitable]</u> that result in transactions involving annuity products so that the <u>financial situation,</u> insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.</p> <p><u>B. This regulation establishes standards of conduct for producers recommending an annuity, including the obligations to act in a competent and trustworthy manner. In order to make a recommendation of an annuity to a consumer that is [suitable for the particular customer/in a consumer’s best interest], the producer, or insurer where no producer is involved, shall employ a consumer-focused approach.</u></p>
<p>California Department of Insurance (CDI)</p>	<p>A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that <u>are suitable, in the consumer’s best interest and</u> result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.</p>

<p>New York State Department of Financial Services (NYS DFS) – Based on Final Rule 187</p>	<p>A. (1) The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers with respect to policies delivered or issued for delivery in this state so that any transaction with respect to those policies is in the best interest of the consumer and appropriately addresses that are suitable, in their best interest and result in transactions result in transactions involving annuity products so that the insurance needs and financial objectives of the consumers at the time of the transaction are appropriately addressed. <u>This part clarifies the duties and obligations of insurers, including fraternal benefit societies, by requiring them to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers with respect to policies delivered or issued for delivery in this state so that any transaction with respect to those policies is in the best interest of the consumer and appropriately addresses that are suitable, in their best interest and result in transactions result in transactions involving annuity products so that the insurance needs and financial objectives of the consumers at the time of the transaction are appropriately addressed.</u> This part also clarifies the nature and extent of supervisory controls that an insurer must maintain to achieve compliance with this part.</p> <p><u>(2) This part further clarifies the duties and obligations of producers when making recommendations to consumers with respect to policies delivered or issued for delivery in this state to help ensure that a transaction is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer at the time of the transaction. The best standard set forth in this part requires a producer, or insurer where no producer is involved, to adhere to a standard of conduct to be enforced by the superintendent, but does not guarantee or warrant an outcome.</u></p>
<p>CFA/CEJ</p>	<p>A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed <u>establish the duties and obligations of insurers and producers when making recommendations to consumers with respect to certain life insurance policies and annuity contracts delivered or issued for delivery in this state to ensure that a transaction is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer at the time of the transaction.</u></p>
<p>B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.</p> <p>Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.</p>	
<p>CFA/CEJ</p>	<p>B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.</p> <p>Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.</p>
<p>IID</p>	<p>B<u>C</u>. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.</p> <p>Drafting Note: The language of subsection B<u>C</u> comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B<u>C</u>.</p> <p><u>Drafting Note: Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 specifically refers to this model regulation as the “Suitability in Annuity Transactions Model Regulation.” Section 989J confirmed the exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirement of the 2010 model.</u></p>

Section 2. Scope	
This regulation shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.	
ACLI; IID	This regulation shall apply to any sale or recommendation to purchase, exchange or replace of an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.
CDI	<u>A.</u> This regulation shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved , that results in the purchase, exchange or replacement recommended. <u>B.</u> Nothing in this regulation shall be interpreted to preclude, preempt, or otherwise interfere with the application of any other laws of this state that may apply in any matter involving the sale of an annuity subject to this article.
Industry Coalition	This regulation shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or <u>by</u> an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.
NYS DFS – Based on Final Rule 187	This regulation shall apply to any solicitation, negotiation, recommendation or sale of an annuity transaction or recommendation with respect to a proposed or in-force policy.
CFA/CEJ	This regulation shall apply to any recommendation to purchase, exchange, or replace <u>or modify a life insurance policy or an</u> annuity contract made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.
Section 3. Authority	
This regulation is issued under the authority of [insert reference to enabling legislation].	
Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.	
<i>No Comments Received</i>	
Section 4. Exemptions	
Unless otherwise specifically included, this regulation shall not apply to transactions involving:	
<i>No Comments Received</i>	

A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;	
NYS DFS – Based on Final Rule 187	A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation; <u>Purchase of a policy where the application is solicited and received in response to a generalized offer by the insurer by mail, at the worksite, or under other methods without producer involvement, other than customer service, administrative support, or enrollment services, and where no recommendation is made;</u>
B. Contracts used to fund:	
<p>(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);</p> <p>(2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;</p> <p>(3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;</p> <p>(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;</p> <p>(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or</p> <p>(6) Formal prepaid funeral contracts.</p>	
CDI	<p>B. Contracts <u>Annuities that are not individually solicited and are</u> used to fund:</p> <p>(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);</p> <p>(2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;</p> <p>(3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC; <u>or</u></p> <p>(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; <u>or</u></p> <p>(5)C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or</p> <p>(6)D. Formal prepaid funeral contracts.</p>

<p>NYS DFS – Based on Final Rule 187</p>	<p>B. Contracts used to fund:</p> <p>(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);</p> <p>(2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;</p> <p>(3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;</p> <p>(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;</p> <p>(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or</p> <p>(6) Formal prepaid funeral contracts<u>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.</u></p> <p><u>C. Any corporate or bank owned policy authorized by Insurance Law section 3205(d) where all benefits under the policy are payable to the corporate or bank policy owner.</u></p> <p><u>D. Any credit life insurance as defined in Part 185 of this Title (Insurance Regulation 27A) sold on a group basis and in compliance with Part 185 of this Title (Insurance Regulation 27A).</u></p> <p><u>E. Any life settlement contract as defined in and subject to Article 78 of the Insurance Law.</u></p>
<p>CFA/CEJ</p>	<p>B. Contracts used to fund:</p> <p>(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);</p> <p>(2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;</p> <p>(3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;</p> <p>(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;</p> <p>(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or</p> <p>(6) Formal prepaid funeral contracts;<u>or</u></p> <p><u>(7) Life insurance policies with no cash value or investment feature.</u></p>

Additional Suggested Subsections	
Jackson National Life Insurance Company (Jackson) and AXA Equitable Life Insurance Company (AXA) (alternative revision in Section 6H)	<p><u>C. Any recommendation by a specified fiduciary provided that:</u></p> <p><u>(1) No sales compensation is received by the specified fiduciary, not including any compensation paid directly by the consumer to the specified fiduciary; and</u></p> <p><u>(2) The annuity has no surrender period or surrender charge.</u></p>
Section 5. Definitions	
A. Annuity	“Annuity” means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
NYS DFS – Based on Final Rule 187	“Annuity” means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
B. Continuing education credit or CE credit	“Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].
<i>No comments received</i>	
C. Continuing education provider or CE provider	“Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].
<i>No comments received</i>	
D. FINRA	“FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
<i>No comments received</i>	

E. Insurer	"Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
CFA/CEJ	"Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including <u>life insurance and annuities</u> .
F. Insurance producer or producer	"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
ACLI; Industry Coalition	"Insurance producer" <u>or "producer"</u> means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
IID	"Insurance producer" <u>or "producer"</u> means a person <u>or entity</u> required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
CFA/CEJ	"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including <u>life insurance and annuities</u> .
G. Recommendation	"Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.
ACLI	"Recommendation" means <u>individualized</u> advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice. <u>Recommendation does not include general communications to the public, marketing and other product or sales materials, prospectuses, general education information and tools and general customer services assistance or administrative support.</u>
Industry Coalition	"Recommendation" means <u>individualized</u> advice provided by <u>an insurance</u> producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.
IID	"Recommendation" means advice provided by <u>an insurance</u> producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice. <u>Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.</u>
NYS DFS – Based on Final Rule 187	"Recommendation" means <u>advice provided by an insurance producer, one or more statements or acts by a producer, or by</u> an insurer where no producer is involved, to <u>an individual</u> consumer that: <u>(1) reasonably may be interpreted by a consumer to be advice and that results in a purchase, exchange or replacement of an annuity</u> a consumer entering into or refraining from entering into a transaction in

	<p>accordance with that advice; or (2) is intended by the producer, or an insurer where no producer is involved, to result in a consumer entering into or refraining from entering into a transaction. A recommendation does not include general factual information to the public, such as advertisements, marketing materials, general education information regarding insurance or other financial products and general administrative services to the consumer. A recommendation also does not include use of an interactive tool that solely provides a prospective consumer with the means to estimate insurance, future income, or other financial needs or compare different types of producers or refer the consumer to a producer, provided that the interactive tool is not used by the producer, or an insurer where no producer is involved, to satisfy any requirement imposed by this part.</p>
CDI	<p>“Recommendation” means advice, <u>guidance or information</u> provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice, <u>guidance or information</u>.</p>
CFA/CEJ	<p>“Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice <u>communication to an applicant for or existing policyholder of life insurance or annuity contract that, based on its content, context and method of communication, would reasonably be viewed as a suggestion that the customer take action or refrain from taking action with respect to a proposed or in-force life insurance policy or annuity contract.</u></p>
H. Replacement	<p>“Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:</p> <ul style="list-style-type: none"> (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated; (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values; (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid; (4) Reissued with any reduction in cash value; or (5) Used in a financed purchase. <p>Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.</p>

<p>CDI</p>	<p>“Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no <u>whether or not a</u> producer <u>is involved</u>, that by reason of the transaction, an existing policy or contract has been or is to be <u>any of the following</u>:</p> <ul style="list-style-type: none"> (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated; (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values; (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid; (4) Reissued with any reduction in cash value; or (5) Used in a financed purchase. <p>Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.</p>
<p>I. Suitability information</p>	<p>“Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:</p> <ul style="list-style-type: none"> (1) Age; (2) Annual income; (3) Financial situation and needs, including the financial resources used for the funding of the annuity; (4) Financial experience; (5) Financial objectives; (6) Intended use of the annuity; (7) Financial time horizon; (8) Existing assets, including investment and life insurance holdings;

	<p>(9) Liquidity needs;</p> <p>(10) Liquid net worth;</p> <p>(11) Risk tolerance; and</p> <p>(12) Tax status.</p>
<p>ACLI</p>	<p>“Suitability<u>Consumer profile</u> information” means information <u>provided by the consumer</u> that is reasonably appropriate to <u>whether</u> determine the suitability of a recommendation <u>is suitable</u>, including the following:</p> <ul style="list-style-type: none"> (1) Age; (2) Annual income; (3) Financial situation and needs, including the financial resources used for the funding of the annuity; (4) Financial experience; (5) Financial objectives, <u>including anticipated future income needs</u>; (6) Intended use of the annuity; (7) Financial time horizon <u>for accumulation and/or income to be provided by the annuity</u>; (8) Existing assets, including investment and life insurance holdings; (9) Liquidity needs; (10) Liquid net worth; (11) Risk tolerance; and (12) Tax status.

<p>Industry Coalition</p>	<p>“Suitability information” means information <u>provided by the consumer</u> that is reasonably appropriate to <u>assist the producer in evaluating whether the determine the suitability of a recommendation <u>satisfies the requirements of this regulation</u></u>, including the following:</p> <ul style="list-style-type: none"> (1) Age; (2) Annual income; (3) Financial situation and needs, including the financial resources used for the funding of the annuity; (4) Financial experience; (5) Financial objectives, <u>including anticipated future income needs</u>; (6) Intended use of the annuity; (7) Financial time horizon <u>for accumulation and income to be provided by the annuity</u>; (8) Existing assets, including investment and life insurance holdings; (9) Liquidity needs; (10) Liquid net worth; (11) Risk tolerance; and (12) Tax status.
<p>IID</p>	<p>“Suitability information” means information that is reasonably appropriate to determine the suitability of whether a recommendation <u>is suitable</u>, including the following:</p> <ul style="list-style-type: none"> (1) Age; (2) Annual income; (3) Financial situation and needs, including the financial resources used for the funding of the annuity; (4) Financial experience; (5) Financial objectives;

	<p>(6) Intended use of the annuity;</p> <p>(7) Financial time horizon;</p> <p>(8) Existing assets <u>or financial products</u>, including investment, <u>annuity</u> and life-insurance holdings;</p> <p>(9) Liquidity needs;</p> <p>(10) Liquid net worth;</p> <p>(11) Risk tolerance; and</p> <p><u>(12) Financial resources used to fund the annuity; and</u></p> <p>(12)<u>(13)</u> Tax status.</p>
<p>CDI</p>	<p>“Suitability information” means information that is reasonably appropriate to determine <u>whether the suitability of</u> a recommendation <u>is suitable and in the best interest of the consumer</u>, including <u>all of</u> the following:</p> <p>(1) Age;</p> <p>(2) Annual income;</p> <p>(3) Financial situation and needs, including the financial resources used for the funding of the annuity;</p> <p>(4) Financial experience <u>and knowledge</u>;</p> <p>(5) Financial objectives;</p> <p>(6) Intended use of the annuity;</p> <p>(7) Financial time horizon, <u>including the duration of existing liabilities and obligations</u>;</p> <p>(8) Existing assets <u>and financial products</u>, including investments, <u>annuities</u> and life insurance holdings;</p> <p>(9) Liquidity needs;</p> <p>(10) Liquid net worth;</p> <p>(11) Risk tolerance; and</p>

	<p>(12) Tax status;</p> <p><u>(13) Whether or not the consumer has a reverse mortgage; and</u></p> <p><u>(14) Whether or not the consumer intends to apply for means tested government benefits, including, but not limited to, Medicaid or the veterans' aid and attendance benefit.</u></p>
<p>NYS DFS – Based on Final Rule 187</p>	<p>“Suitability information” means:</p> <p><u>(1) For a policy solely providing term life insurance with no cash value, information that is reasonably appropriate to determine the suitability of a recommendation commensurate with the materiality of the transaction to a consumer’s financial situation at the time of the recommendation and the complexity of the transaction recommended, including the following, as relevant to the consumer:</u></p> <p><u>(a) Age;</u> <u>(b) Annual income;</u> <u>(c) Financial situation and needs, including the financial resources used for the funding of the policy;</u> <u>(d) Financial objectives;</u> <u>(e) Intended use of the policy, including any riders attached thereto;</u> <u>(f) Financial time horizon, including the duration of existing liabilities and obligations;</u> <u>(g) Existing assets, including investment and insurance holdings;</u> <u>(h) Willingness to accept non-guaranteed elements in the policy, including variability in premium, death benefit, or fees; and</u> <u>(i) Any other information provided by the consumer which in the reasonable judgment of the producer, or the insurer where no producer is involved, is relevant to the suitability of the transaction.</u></p> <p><u>(2) For any policy other than a policy solely providing term life insurance with no cash value, information that is reasonably appropriate to determine the suitability of a recommendation commensurate with the materiality of the transaction to a consumer’s financial situation at the time of the recommendation and the complexity of the transaction recommended, including the following, as relevant to the consumer:</u></p> <p>(1)(a) Age; (2)(b) Annual income; (3)(c) Financial situation and needs, including the financial resources used for the funding of the annuity policy; (4)(d) Financial experience; (5)(e) Financial objectives; (6)(f) Intended use of the annuity policy, including any riders attached thereto; (7)(g) Financial time horizon, including the duration of existing liabilities and obligations; (8)(h) Existing assets, including investment and life insurance holdings; (9)(i) Liquidity needs; (10)(j) Liquid net worth; (11)(k) Risk tolerance; and <u>(l) willingness to accept non-guaranteed elements in the policy, including variability in premium, cash value, death benefit or fees;</u> (12)(m) Tax status; <u>and</u></p>

	<p><u>(n) Any other information provided by the consumer which in the reasonable judgment of the producer, or the insurer where no producer is involved, is relevant to the suitability of a transaction.</u></p>
<p>CFA/CEJ</p>	<p>“<u>Best interest analysis Suitability</u>–information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:</p> <ul style="list-style-type: none"> (1) Age; (2) Annual income; (3) Financial situation and needs, including the financial resources used for the funding of the annuity; (4) Financial experience <u>and knowledge</u>; (5) Financial objectives; (6) Intended use of the <u>life insurance or annuity, including any riders attached thereto</u>; (7) Financial time horizon, <u>including the duration of existing liabilities and obligations</u>; (8) Existing assets <u>and financial products</u>, including investment and life insurance holdings; (9) Liquidity needs; (10) Liquid net worth; (11) Risk tolerance, <u>including tolerance of non-guaranteed elements in a policy, including variability in premium, cash value, death benefit or fees</u>; and (12) Tax status.

Additional Suggested Definitions	
ACLI	<u>?. "Suitable" means a recommendation of an annuity that is consistent with the consumer's insurance needs and financial objectives based on the information set forth in the consumer profile information at the time of the recommendation.</u>
IID	<p><u>?. "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, cash benefit, or other remuneration received by producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.</u></p> <p><u>?. "Intermediary" means an entity contracted with an insurer or another intermediary to facilitate the sale of the insurer's annuities by producers.</u></p> <p><u>?. "Material conflict of interest" means a financial interest of the producer, or the insurer where no producer is involved, in the sale of an annuity that a reasonable person would expect to influence a recommendation of the producer or insurer, including financial incentives or rewards offered to or received by the producer, or a direct interest or ownership in an insurer by the producer or an immediate family member of the producer.</u></p> <p><u>?. "Non-cash compensation" means any form of compensation received by the producer from an insurer or intermediary that is not cash compensation, but is variable or dependent on the volume of annuity sales production, including but not limited to, entertainment, merchandise, gifts and prizes, travel expenses or meals and lodging, and marketing or advertising expenses.</u></p> <p><u>?. "Suitable" means in the furtherance of a consumer's objectives and needs under the circumstances then prevailing and based upon the facts disclosed by the consumer, or known at the time of the recommendation by the producer, or insurer where no producer is involved, as to the annuities, insurance, investment, and financial products the producer is authorized and licensed to recommend or sell, and as to the consumer's financial situation, objectives and needs, including the consumer's suitability information.</u></p>
NYS DFS – Based on Final Rule 187	<p><u>?. "Consumer" means the owner or prospective purchaser of a policy.</u></p> <p><u>?. "Policy" means a life insurance policy, annuity contract, or a certificate issued by a fraternal benefit society or under a group life insurance policy or group annuity contract.</u></p> <p><u>?. "Suitable" means in the furtherance of a consumer's needs and objectives under the circumstances then prevailing based upon the suitability information provided by the consumer and all products, services and transactions available to the producer.</u></p> <p><u>?. "Transaction" means any sales transaction or in-force transaction.</u></p> <p><u>?. "Sales transaction" means the purchase or issuance of a policy, any replacement as defined by section 51.2(a) of Part 51 (Insurance Regulation 60), conversion, or any modification or election of a contractual provision with respect to an in-force policy that generates new sales compensation. New sales compensation does not include compensation provided to a producer when, after the initial premium or deposit under a policy, the consumer pays further premium or deposits pursuant to the policy.</u></p>

	<p>? <u>“In-force transaction” means any modification or election of a contractual provision with respect to an in-force policy that does not generate new sales compensation. New sales compensation does not include compensation provided to a producer when, after the initial premium or deposit under a policy, the consumer pays further premium or deposits pursuant to the policy.</u></p>
<p>CDI</p>	<p>? <u>(1) “Best interest” means, at the time the annuity is offered, sold, issued and delivered, acting with the reasonable diligence, care, skill and prudence, that a reasonably prudent person acting in a like capacity and familiar with such matters would act, and in a manner that puts the interest of the consumer first and foremost and will not result in the producer or insurer receiving in excess of reasonable compensation.</u></p> <p><u>(2) “Best interest” does not require that a resulting recommendation is the least expensive annuity product, or the annuity product with the highest stated interest rate or income payout rate, available in the marketplace at the time of the annuity transaction. “Best interest” also does not require that the recommendation is the single “best” annuity product available in the marketplace at the time of the annuity transaction. However, as part of acting in the consumer’s best interest in compliance with subparagraph B.(1) above, if the producer and/or insurer recommend the purchase of an annuity, the annuity recommended and issued must be the best annuity for the consumer’s circumstances that the insurance producer is authorized to sell and the insurer offers, taking into consideration the consumers’ suitability information, the price, and annuity contract terms, including but not limited to the fees, interest rate, surrender charge period, riders and other information that is known or should be known by the producer or insurer.</u></p> <p>? <u>“Compensation” means any discount, concession, service fee, commission, sales charge, loan, override, or cash benefit or other remuneration received in connection with the solicitation, negotiation, recommendation or sale of an annuity.</u></p> <p>? <u>“Intermediary” means an entity contracted with the insurance company to facilitate a producer’s and/or insurer’s sale of an annuity.</u></p> <p>? <u>(1) “Material conflict of interest” means a financial interest of an insurance producer and/or insurer that a reasonable person would expect to effect the ability of the producer and/or insurer to: (a) exercise his/hers/its best judgment; and (2) put the consumer’s interests before the producer’s and/or insurer’s own interest.</u></p> <p><u>(2) “Material conflict of interest” includes financial incentives or rewards available to, offered to or received by an insurance producer, or a direct interest or ownership in an insurer by an insurance producer or an immediate family member of an insurance producer. It also includes non-cash compensation available to, offered to or received by a producer or intermediary as a result of meeting target sales levels.</u></p> <p>? <u>“Non-cash compensation” means any form of compensation that is not cash compensation, including but not limited to, merchandise, gifts, tickets to paid events, prizes, travel expenses or meals and lodging.</u></p>

CFA and CEJ	<p><u>? “Best interest” means, acting, at the time the recommendation is made, with 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, insurer, or any party other than the consumer. A producer or insurers acts in the best interest of the consumer if they recommend the best option the producer or insurer has available to recommend at the time of the recommendation based on the characteristics of product and the financial needs and objectives of the consumer. Acting in the consumer’s best interest does not mean recommending the best option available in the marketplace at the time of the recommendation.</u></p> <p><u>? “Consumer” means an applicant or an existing policyholder of a life insurance policy or annuity contract.</u></p> <p><u>? “Life insurance” means a life insurance policy that is an individual product under state law that is individually solicited whether the product is classified as an individual or group life insurance. For the purposes of this regulation, “life insurance” does not include policies with no cash value or investment feature.</u></p> <p><u>? “Material conflict of interest” means a financial or other interest of an insurance producer, or the insurer where no producer is involved, that a reasonable person would expect could affect the impartiality of the recommendation or the ability of the insurer or producer to act in the consumer’s best interest.</u></p> <p><u>? “Reasonable compensation” means compensation, including both cash and non-cash compensation, that is not excessive in light of services provided.</u></p>
Jackson/AXA	<p><u>? “Specified fiduciary” means an entity acting, registered, and regulated under a fiduciary standard of care as: (1) a bank; (2) a trust company; or (3) an investment adviser under the Investment Advisers Act of 1940 or equivalent state law, and a person acting as an associated person of a specified fiduciary.</u></p>

Section 6. Duties of Insurers and of Insurance Producers

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following:

(1) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;

(3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(b) The consumer would benefit from product enhancements and improvements; and

(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

ACLI A. A producer, or an insurer where no producer is involved, shall act in the best interest of the consumer without placing the producer's, or insurer's where no producer is involved, interests above the financial interests of the consumer when making a recommendation of an annuity product by:

(1) Acting with reasonable diligence, care, skill and prudence;

(2) Making suitable recommendations in accordance with Section 6B below;

(3) Disclosing to the consumer the following: (a) The types of products and services available from the producer; (b) The basis of the recommendation; (c) a description of the sources and types of compensation the producer will receive and may be eligible to receive as a result of the annuity transaction, and, if applicable, the fact that compensation may vary depending on the number of factors; and (d) material conflicts of interest arising from financial incentives associated with the recommendation.

AB. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer ~~on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information,~~ and that there is a reasonable basis to believe all of the following:

(1) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

	<p>(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, <u>income from</u> annuitization or <u>a</u> death or living benefit;</p> <p>(3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and</p> <p>(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:</p> <p>(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;</p> <p>(b) The consumer would benefit from product enhancements and improvements; and</p> <p>(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.</p>
<p>IID</p>	<p>Section 6. Duties of Insurers and Insurance-Producers</p> <p>A. <u>(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the <u>particular</u> consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:</u></p> <p><u>(2) "Reasonable grounds for believing that a recommendation is suitable" requires reasonable competence, trustworthiness, fair dealing, diligence, care and skill by the producer, or the insurer where no producer is involved.</u></p> <p><u>(3) These standards require a consumer-focused evaluation and reasonable disclosures of the producer's or insurer's interests so that the consumer's interests are placed ahead of the interests of the producer or insurer and the producer's compensation and material conflicts of interest are merely incidental to the transaction. This does not mean that the annuity product with the lowest one-time or multiple occurrence compensation structure must necessarily be recommended, but the recommendation must be diligently focused on whether the product costs, rates, benefits, features and other contractual provisions of the annuity address the actual financial situation, objectives and needs of the particular consumer.</u></p> <p><u>(4) These standards shall be applied in a limited manner and scope to the licensed authority and qualification of the producer, or insurer where no producer is involved, and whether the producer, or insurer where no producer is involved, is only authorized to recommend a limited range of annuity products or product types.</u></p>

(5) These standards require the producer, or insurer where no producer is involved, to orally, or in writing, describe to the consumer the grounds for the recommendation.

(6) The producer, or insurer where no producer is involved, shall consider all factors including the consumer's suitability information, product costs, rates, benefits, features and other contractual provisions. The factors set forth are generally relevant in making a suitability determination, but the level of importance of each factor may vary depending on the facts and circumstances of a particular case. Factors should not be considered in isolation.

Drafting Note: The NAIC in adopting this model regulation intends for interpretation of the requirements in subsection (A) to be in harmony with the principles of FINRA Rules 2111 and 2330 regarding suitability, the rules' supplementary material and interpretations, and any successor rules.

B. Prior to the recommendation of an annuity, a producer, or an insurer where no producer is involved, shall do all of the following:

(1) Make reasonable efforts to obtain suitability information from the consumer;

(2) Consider the types of products the producer, or insurer where no producer is involved, is authorized and licensed to recommend or sell that may align with the consumer's disclosed suitability information and address the consumer's financial situation, objectives and needs; and

(3) Disclose to the consumer any limitations the producer or the insurer has in regard to the following: (a) The type of products that the producer is authorized and licensed to recommend or sell; and (b) Whether only specific insurer company products or a limited range of annuity products may be offered.

C. Prior to or at the time of the recommendation of an annuity, the producer, or insurer where no producer is involved, shall reasonably disclose to the consumer:

(1) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(2) A description of the sources and types of cash compensation to be received by the producer including whether compensated for the sale of a recommended annuity by commission as part of premium or by fee as a result of a contract for advice or consulting services or fee. The producer shall disclose a reasonable estimate of the amount of cash compensation, which may be stated as a range of amounts, percentages, or values. The producer shall also disclose whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts, percentages, or values; [and]

(3) The type of non-cash compensation that exceeds \$500 per producer per year the producer may receive from an insurer or intermediary that is connected to the sale of the annuity; and

(4) [Any and all material conflicts of interest.]

Iowa Comment: Iowa is uncertain that a broad reference to disclose material conflicts of interest is necessary, but Iowa has included subparagraph (4) to permit further discussion concerning the risk to consumers addressed by this requirement.

D. In making a recommendation, the producer, or insurer where no producer is involved, shall at that time have a reasonable basis to believe all of the following:

(1) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk;

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;

(3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(b) The ~~consumer would benefit from product enhancements and improvements~~replacing product is designed to provide a substantial benefit to the consumer over the life of the product; and

(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding ~~36~~60 months.

<p>CDI</p>	<p>A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for <u>make only suitable recommendations that are in the best interest of the consumer at the time the recommendations are made. These recommendations shall be based on the basis of</u> the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, <u>and other relevant information about the consumer about which the producer or insurer becomes aware,</u> and that there is <u>shall be</u> a reasonable basis to believe all of the following:</p> <p>(1) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;</p> <p>Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</p> <p>(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;</p> <p><u>(3) The consumer would receive a tangible net benefit from the transaction;</u></p> <p>(3)<u>(4)</u> The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and</p> <p>(4)<u>(5)</u> In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:</p> <p>(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;</p> <p>(b) The consumer would benefit from product enhancements and improvements; and</p> <p>(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36<u>60</u> months.</p>
<p>Industry Coalition</p>	<p>A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the</p>

~~consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following: In making a recommendation to an individual consumer, a producer, or an insurer where no producer is involved, shall act in the best interest of the consumer without placing the financial interests of the producer, or the insurer where no producer is involved, above the consumer's interests. A producer, or an insurer where no producer is involved, acts in the best interest of the consumer by:~~

(1) Making reasonable efforts to obtain the consumer's suitability information;

(2) Providing disclosure of the following information to the consumer at or prior to the time of the recommendation:

(a) The types of products and services available from the producer;

(b) Any limitations on the products or services the producer can recommend (such as where the producer is duly authorized to recommend only products issued by particular insurers or a limited range of product(s));

(c) The scope of services being provided by the producer, and the scope of the producer's licenses;

(d) Materials conflicts of interest arising from financial incentives associated with the recommendation, including any direct interest or ownership the producer or an immediate family member of the producer has in the insurer whose product is being recommended;

~~(1) The consumer has been reasonably informed of~~(e) The various features and benefits of the recommended annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

(f) The sources and types of compensation the producer will or may receive as a result of the recommended transaction; and

(g) Whether and the basis upon which the amount of compensation the producer will or may receive could vary depending on the specific product being recommended; and

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

(3) Having a reasonable basis to believe all of the following at the time of the recommendation:

(a) The recommendation is suitable for the consumer on the basis of the consumer's suitability information and any other relevant facts disclosed by the consumer;

~~(2)~~(b) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, income from annuitization or death or living benefit;

	<p>(3)(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and</p> <p>(4)(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:</p> <p>(a)(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;</p> <p>(b)(ii) The consumer would benefit from product enhancements and improvements; and</p> <p>(e)(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months; <u>and</u></p> <p><u>(4) Making a record of the recommendation, including the basis for the producer's decision to select the particular annuity being recommended to the individual consumer</u></p>
<p>NYS DFS – Based on Final Rule 187</p>	<p>A. (1) In recommending <u>a sales transaction</u> to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following: <u>act in the best interest of the consumer.</u></p> <p><u>(2) The producer, or insurer where no producer is involved, acts in the best interest of the consumer when:</u></p> <p><u>(a) The producer's or insurer's recommendation to the consumer are based on an evaluation of the relevant suitability information of the consumer and reflects the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use under the circumstances then prevailing. Only the interests of the consumer shall be considered in making the recommendation. The producer's receipt of compensation or other incentives permitted by the insurance law and the insurance regulations is permitted by this requirement provided that the amount of the compensation or the receipt of an incentive does not influence the recommendation;</u></p> <p><u>(b) the sales transaction is suitable; and</u></p> <p><u>(c) there is a reasonable basis to believe:</u></p> <p>(1)(i) The consumer has been reasonably informed of various features of the <u>annuity policy and potential consequences of the sales transaction, both favorable and unfavorable,</u> such as the potential surrender period and surrender charge, <u>any secondary guarantee</u></p>

	<p><u>period, equity-index features, availability of cash value, potential tax penalty implications if the consumer sells, modifies, exchanges, surrenders, lapses or annuitizes the annuity policy, death benefit, mortality and expense fees, cost of insurance charges, investment advisory fees, policy exclusions or restrictions, potential charges for and features of riders, limitations on interest returns, guaranteed interest rates, insurance and investment components, and market risk, any differences in features among fee-based and commission-based versions of the policy and the manner in which the producer is compensated for the sale and servicing of the policy in accordance with Part 30 of this Title (Insurance Regulation 194) and Insurance Law section 2119;</u></p> <p>Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</p> <p>(2)(ii) The consumer would benefit from certain features of the <u>annuity policy</u>, such as tax-deferred growth <u>of any cash values</u>, annuitization or death or living benefit;</p> <p>(3)(iii) The particular <u>annuity policy</u> as a whole, the underlying subaccounts to which funds are allocated at the time of <u>purchase or exchange of the annuity</u> the sales transaction, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on <u>his or her the consumer's</u> suitability information; and</p> <p>(4)(iv) In the case of <u>an exchange or a</u> replacement of <u>an annuity policy</u>, the <u>exchange or</u> replacement is suitable including taking into consideration whether:</p> <p>(a)(I) The consumer will incur a surrender charge, <u>increased premium or fees, decreased coverage duration, decreased death benefit or income amount, adverse change in health rating,</u> be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), <u>be subject to tax implications if the consumer surrenders or borrows from the policy,</u> or be subject to increased fees, investment advisory fees, <u>premium loads</u> or charges for riders and similar product enhancements;</p> <p>(b)(II) The consumer would benefit from product enhancements and improvements, <u>such as a decreased premium or fees, increased coverage duration, increased death benefit or income amount;</u> and</p> <p>(c)(III) The consumer has had another <u>annuity exchange or policy</u> replacement and, in particular, an exchange or replacement within the preceding 36 months.</p> <p><u>B. In making a recommendation, a producer, or an insurer where no producer is involved, may weight multiple factors that are relevant to the best interests of the consumer including, but not limited to, the benefits provided by the policy, the price of the policy, the financial strength of the insurer, and other factors that differentiate products or insurers.</u></p>
CFA/CEJ	<p>A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the</p>

~~consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

~~(1) In making recommendations regarding a proposed or in-force life insurance or annuity to a consumer, the insurance producer, or the insurer where no producer is involved, shall make only those recommendations that are in the best interests of the consumer at the time the recommendation is made.~~

~~(2) The determination of whether the recommendation is in the consumer's best interest shall be based on the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's best interest analysis information, as well as the characteristics of the life insurance or annuity.~~

~~(3) Relevant life insurance or annuity characteristics include such factors as the product's potential surrender period and surrender charge, any secondary guarantee period, equity-index features, availability of cash value, potential tax implications if the consumer sells, modifies, surrenders, lapses or annuitizes the product, death benefit, mortality and expense fees, cost of insurance charges, investment advisory fees, product exclusions or restrictions, potential charges for and features of riders, limitations on interest returns, guaranteed interest rates, insurance and investment components, market risk, and any other relevant product features.~~

~~B. The insurance producer, or the insurer where no producer is involved, shall document the basis on which the producer or insurer concluded that the recommendation meets the best interest standard of care for the consumer, including the assumptions and analysis that led to the recommendation.~~

~~C. The insurance producer, or the insurer where no producer is involved, shall have a reasonable basis to believe all of the following:~~

~~(1) The consumer has been reasonably informed of various features of the life insurance or annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the life insurance or annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;~~

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

~~(2) The consumer would benefit from certain features of the life insurance or annuity, such as tax-deferred growth, annuitization or death or living benefit;~~

~~(3) The particular life insurance or annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, the recommended transaction, and riders and similar product enhancements, if any, are suitable in the best interest (and in the case of an exchange or replacement, the transaction as a whole is suitable in the best interest) for the particular consumer based on his or her suitability best interest analysis information; and~~

~~(4) In the case of an exchange or replacement of life insurance or annuity, the exchange or replacement is suitable in the consumer's~~

	<p><u>best interest</u> including taking into consideration whether:</p> <p>(a) The consumer will incur a surrender charge, <u>increased premium or fees, decreased coverage duration, decreased death benefit or income amount, adverse change in health rating,</u> be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), <u>be subject to tax implications if the consumer surrenders or borrows from the policy,</u> or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;</p> <p>(b) The consumer would benefit from product enhancements and improvements <u>such as decreased premium or fees, increased coverage duration, increased death benefit or income amount;</u> and</p> <p>(c) The consumer has had another <u>life insurance policy or annuity contract</u> exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.</p> <p><u>I. A producer shall not make a recommendation to a consumer to enter into a transaction unless the producer has a reasonable basis to believe that the consumer has the financial ability to meet the financial commitment under the policy.</u></p> <p><u>J. An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s and producers’ compliance with this Part. An insurer may contract with a third party to establish and maintain a system of supervision with respect to producers.</u></p> <p><u>K. An insurer shall be responsible for ensuring that every producer recommending any transaction with respect to the insurer’s products is adequately trained to make the recommendation.</u></p> <p><u>L. A producer shall not make a recommendation to a consumer to enter into a transaction about which the producer has inadequate knowledge.</u></p>
<p>B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer’s suitability information.</p>	
<p>ACLI</p>	<p><u>BC.</u> Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the <u>consumer’s suitability</u>consumer <u>profile</u> information.</p>
<p>IID</p>	<p>B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer’s suitability information.</p>
<p>NYS DFS – Based on Final Rule 187</p>	<p>B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation <u>of a sales transaction,</u> an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer’s suitability information.</p>

<p>Industry Coalition</p>	<p>B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information. Nothing contained in this regulation shall be deemed to:</p> <p>(1) Cause any producer or insurer to be treated as a fiduciary, or impose a duty of loyalty on any producer or insurer, under common law or any federal or state law or regulation;</p> <p>(2) Require a produce or an insurer to determine that the recommended product is the "best" or "cheapest" product;</p> <p>(3) Require or prohibit the use of any particular form or type of compensation or compensation arrangement, or any particular type of annuity distribution model (such as proprietary distribution or third party distribution);</p> <p>(4) Require disclosure of, or impose any restrictions or prohibitions on, the health, retirement or other employee benefits to which a producer may be entitled; or</p> <p>(5) Impose on a producer or an insurer any continuing obligation to the consumer after the recommended annuity is issued.</p>
<p>CFA/CEJ</p>	<p>BD. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from making a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability<u>best interest analysis</u> information.</p> <p>E. In making a recommendation, the insurance producer, or insurer where no producer is involved, shall disclose to the consumer:</p> <p>(1) Any and all material conflicts of interest, including that the producer will receive a commission or fee for the sale of the life insurance or annuity; the amount of the commission or fee and, if applicable, all other compensation the insurance producer will receive as a result of a contract for services for advice or for the sale of the life insurance or annuity to the consumer. This disclosure shall be made verbally and in a separate stand-alone document that is no more than two pages in length and is written in plain language in 14-point font that is left with the consumer when the application is signed; and</p> <p>(2) The basis on which the producer, or the insurer where no producer is involved, concluded that the recommendation is the best available option for the consumer. This disclosure shall be made verbally and in a separate stand-alone document that is no more than two pages in length and is written in plain language in 14-point font that is left with the consumer when the application is signed.</p>
<p>C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.</p>	
<p>ACLI</p>	<p>CD. Except as permitted under subsection DE, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.</p>
<p>Industry Coalition</p>	<p>C. Except as permitted under subsection DE, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.</p>

IID	<p>CE. Except as permitted under subsection DG, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.</p>
CFA/CEJ	<p>CE. Except as permitted under subsection DG, an insurer shall not issue <u>a policy or</u> an annuity recommended to a consumer unless there is a reasonable basis to believe the <u>policy or</u> annuity is <u>suitable in the best interests of the consumer</u> based on the consumer's <u>suitability best interest analysis</u> information.</p>
NYS DFS – Based on Final Rule 187	<p>C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.</p>
CDI	<p>C. The producer or insurer if no producer is involved shall compare the annuity that is to be replaced or exchanged with the replacing annuity to determine whether the proposed transaction would be in the consumer's best interest. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable and in the consumer's best interest based on the consumer's suitability information and other information about which the producer and/or insurer may become aware. The preceding sentence and subsection D notwithstanding, neither a producer nor an insurer shall recommend the sale of an annuity to replace an existing annuity where purchase of the replacing annuity does not confer a substantial financial benefit over the life of the policy to the consumer, so that a reasonable person would believe the purchase is unnecessary.</p> <p>CE. Except as permitted under subsection DE, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.</p>
<p>D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:</p> <p>(a) No recommendation is made;</p> <p>(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p> <p>(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</p> <p>(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.</p> <p>(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.</p>	
ACLI	<p>DE. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection AB or CE related to any annuity transaction if:</p> <p>(a) No recommendation is made;</p>

	<p>(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p> <p>(c) A consumer refuses to provide relevant suitability<u>consumer profile</u> information and the annuity transaction is not recommended; or</p> <p>(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.</p> <p>(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.</p>
<p>IID</p>	<p>DF. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsections A or through CE related to any annuity transaction if:</p> <p>(a) No recommendation is made;</p> <p>(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p> <p>(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</p> <p>(d) A consumer decides to enter into an annuity transaction that is not based on<u>does not follow</u> at the recommendation of the insurer or the insurance producer made; or</p> <p><u>(e) The consumer purchases, exchanges or replaces the annuity through another producer who makes no recommendation.</u></p> <p>(2) An insurer's issuance of an annuity subject to paragraph (1) <u>of this subsection</u> shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued <u>and shall include documentation of any recommendation made and the producer's efforts to obtain the consumer's suitability information.</u></p>
<p>NYS DFS – Based on Final Rule 187</p>	<p>D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance<u>ea</u> producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:</p> <p>(a) No recommendation is made;</p> <p>(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p> <p>(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</p>

	<p>(d) A consumer decides to enter into an annuity sales transaction that is not based on a recommendation of the insurer or the insurance producer.</p> <p>(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued effectuation of a sales transaction with respect to its policies subject to paragraph (1) of this subsection shall be suitable based on all the information actually known to the insurer at the time of the sales transaction.</p>
Industry Coalition	<p>D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:</p> <p>(a) No recommendation is made;</p> <p>(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p> <p>(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</p> <p>(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.</p> <p>(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.</p> <p>E. (3) <u>At the time of any transaction to which paragraph (1) applies, the insurance</u> producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:</p> <p>(1) Make a record of any recommendation subject to section 6A of this regulation;</p> <p>(2)(a) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and</p> <p>(3)(b) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.</p>
CDI	<p>D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:</p> <p>(a) No recommendation is made;</p> <p>(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;</p>

	<p>(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</p> <p>(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.</p> <p>(2) An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known, <u>or which after reasonable inquiry, should be known</u> to the insurer at the time the annuity is issued.</p> <p><u>(3) If any of the situations set forth in subparagraphs (1)(a); (c); or (d) occur, prior to issuing the annuity, the insurer shall send by email or United States mail the consumer a product suitability form with a cover letter that states that in order to ensure that the consumer is purchasing an annuity which is in the consumer’s best interest, the insurer is requesting the consumer’s suitability information. If the consumer refuses to complete the suitability form, the consumer must write on the form: “I refuse to complete this questionnaire and want to purchase the annuity which was not recommended by the insurance agent.” The insurer is prohibited from issuing the annuity until it receives a response to its mailing from the consumer or speaks with the consumer to verify that the consumer refuses to provide the suitability information. If the insurer speaks with the consumer to verify that the consumer refuses to provide the suitability information, the insurer must make a written record of the discussion with the consumer.</u></p>
<p>CFA/CEJ</p>	<p>DG. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction <u>for a recommendation meeting the best interest standard of care</u> if:</p> <p>(a) No recommendation is made;</p> <p>(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer, <u>provided that the insurance producer and/or insurer did not know and should not reasonably have known that the information was inaccurate; or</u></p> <p>(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or</p> <p>(d)<u>(c)</u> A consumer decides to enter into an annuity<u>a</u> transaction that is not based on a recommendation of the insurer or the insurance producer.</p> <p>(2) An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.</p> <p><u>(2) (a) If any of the situations set forth in paragraphs (1)(a) or (c) occur, prior to issuing the life insurance or annuity, the insurer shall send the consumer a best interest analysis information form with a cover letter that states that in order to ensure that the consumer is purchasing life insurance or an annuity which is in the consumer’s best interest, the insurer is requesting the relevant consumer information. If the consumer refuses to complete the best interest analysis information form, the consumer must write on the form: “I refuse to complete this questionnaire and want to purchase the annuity which was not recommended by the insurer or insurance agent.”</u></p>

	<u>(b) The insurer is prohibited from issuing the life insurance or annuity until it receives a response from the consumer to the request in subsection (a).</u>
<p>E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:</p> <p>(1) Make a record of any recommendation subject to section 6A of this regulation;</p> <p>(2) Obtain a customer signed statement documenting a customer’s refusal to provide suitability information, if any; and</p> <p>(3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer’s or insurer’s recommendation.</p>	
ACLI	<p>EF. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:</p> <p>(1) Make a record of any recommendation subject to section 6A<u>6B</u> of this regulation;</p> <p>(2) Obtain a customer signed statement documenting a customer’s refusal to provide suitability<u>consumer profile</u> information, if any; and</p> <p>(3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer’s or insurer’s recommendation.</p>
IID	<p>EG. An insurance<u>A</u> producer or, <u>insurer</u> where no insurance producer is involved, the responsible insurer representative, shall at the time of <u>recommendation or</u> sale:</p> <p>(1) Make a record of any recommendation <u>and the grounds for the recommendation</u> subject to section 6A of this regulation;</p> <p>(2) Obtain a customer signed statement documenting a customer’s refusal to provide suitability information, if any; and</p> <p>(3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer’s or insurer’s recommendation.</p>
NYS DFS – Based on Final Rule 187	<p>E. An insurance<u>A</u> producer or, <u>an insurer</u> where no insurance producer is involved, the responsible insurer representative, shall at the time of <u>a sale</u>recommendation:</p> <p>(1) Make a record of any recommendation subject to section 6A of this regulation<u>Disclose to the consumer in a reasonable summary format all relevant suitability considerations and product information, both favorable and unfavorable, that provide the basis of any recommendations;</u></p> <p>(2) <u>Document the basis for any recommendation made, subject to subdivisions (a) and (b) of this section and the facts and analysis to</u></p>

	<p><u>support that recommendation;</u></p> <p>(2) (3) <u>Document, if relevant, Obtain a customer signed statement documenting at the</u> customer's refusal to provide suitability information, if any; and</p> <p>(3)(4) <u>Document Obtain a customer signed statement acknowledging</u> that an <u>annuity sales</u> transaction is not recommended if a customer decides to enter into an <u>annuity sales</u> transaction that is not based on the insurance producer's or insurer's recommendation.</p>
<p>CDI</p>	<p>EF. An insurance producer or, <u>insurer</u> where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:</p> <p>(1) <u>At the time of making the recommendation, disclose to the consumer any and all limitations the producer or the insurer has regarding: (a) The type of financial products, including annuities, that can be provided; (b) Whether only the products of specified insurers can be offered; (c) The scope of the services provided; and (d) The scope of the producer's licenses.</u></p> <p>(2) <u>At the time of making the recommendation and completing the application, disclose to the consumer verbally and in writing, any and all material conflicts of interest, including:</u></p> <p>(a) <u>That the producer will receive a commission or fee for the sale of the annuity; the amount of the commission or fee and if applicable, the amount of all other cash compensation that may and/or will be received as a result of entering into a contract for services for advice and/or for the sale of the recommended annuity; and all non-cash compensation that is available and/or may and/or will be received. The required written disclosure shall be set forth in a separate standalone document that is no more than two pages in length and is written in plain language in 14 point font and is left with the consumer when the application is signed.</u></p> <p>(4)(3) <u>Make a record of any recommendation subject to section 6A of this regulation. This writing shall contain an explanation of the reasons the recommendation is suitable and in the consumer's best interest, including the assumptions and analysis that led to the determination. The required written disclosure shall be set forth in a separate standalone document that is no more than two pages in length and is written in plain language in 14 point font. A copy of this writing must be left with the consumer at the time the application is signed and a copy must be provided to the insurer;</u></p> <p>(2) (4) <u>If applicable, Obtain obtain</u> a customer signed statement documenting a customer's refusal to provide suitability information, if any; and</p> <p>(3)(5) <u>If applicable, Obtain obtain</u> a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.</p>

<p>Industry Coalition</p>	<p>E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:</p> <p>(1) Make a record of any recommendation subject to section 6A of this regulation;</p> <p>(2) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and</p> <p>(3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.</p> <p><u>E. The offering by an insurance producer, or insurer where no producer is involved, of only proprietary or a limited range of annuity products or product types shall not be in and of itself a violation of any of the requirements of this regulation.</u></p>
<p>CFA/CEJ</p>	<p>E<u>H</u>. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale<u>the recommendation</u>:</p> <p>(1) Make a record of any recommendation subject to section 6A of this regulation<u>Disclose to the consumer all relevant suitability considerations and product information, whether favorable or unfavorable, that provide the basis for any recommendation;</u></p> <p>(2) Document any recommendation subject to subsection A and B of this regulation;</p> <p>(2)(3) Obtain a customer signed statement documenting a<u>Document the</u> customer's refusal to provide suitability<u>customer profile</u> information, if any; and</p> <p>(3)(4) Obtain a customer signed statement acknowledging that an annuity<u>Document that a</u> transaction is not recommended if a customer decides to enter into an annuity<u>a</u> transaction that is not based on the insurance producer's or insurer's recommendation.</p>
<p>F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:</p> <p>(a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;</p> <p>(b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;</p> <p>(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;</p> <p>(d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such</p>	

an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.

(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

ACLI	<p>FG. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' <u>producers authorized to recommend the insurer's annuity products'</u> compliance with this regulation, including, but not limited to, the following:</p> <p>(a) The insurer shall maintain reasonable procedures to inform its insurance-producers <u>authorized to recommend the insurer's annuity products</u> of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;</p> <p>(b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance-producers <u>authorized to recommend the insurer's annuity products</u> to comply with the requirements of section 7 of this regulation;</p> <p>(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance-producers <u>authorized to recommend the insurer's annuity products</u>;</p> <p>(d) The insurer shall maintain procedures for review of each recommendation <u>of its annuity products</u> prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures</p>
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may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer [suitability profile](#) information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming [suitability profile](#) information after issuance or delivery of the annuity; and

(f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.

(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(3) An insurer is not required to:

[\(a\) Consider or have knowledge of other insurers' annuity products that a producer could have recommended to a consumer nor include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer that the producer is authorized to recommend;](#)

[\(b\) Confirm or validate the adequacy, accuracy or nature, of an insurance producer's disclosure of the producer's material conflict of interest or other disclosures required by Section 6A\(3\); or](#)

[\(c\) Review or assess at the time of the recommendation whether the producer acted with reasonable diligence, care, skill and prudence.](#)

<p>IID</p>	<p>F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s and its insurance-producers’ compliance with this regulation, including, but not limited to, the following:</p> <p>(a) The insurer shall maintain reasonable procedures to inform its insurance-producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance-producer training manuals;</p> <p>(b) The insurer shall establish standards for insurance-producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;</p> <p>(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance-producers;</p> <p>(d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;</p> <p>(e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and</p> <p><u>(f) The insurer shall maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer information required by Section 6 of this regulation; and</u></p> <p>(f)(g) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.</p> <p>(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer’s compliance with subparagraph (b) of this paragraph.</p> <p>(b) An insurer’s supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.</p>
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	<p>(3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.</p>
<p>CDI</p>	<p>FG. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:</p> <p>(a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;</p> <p>(b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;</p> <p>(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;</p> <p>(d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable <u>and in the consumer's best interest</u>. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria. <u>The selection criteria shall include, among other things, whether the applicant is a senior citizen;</u></p> <p>(e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable <u>or in the consumer's best interest</u>. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and</p> <p>(f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.</p> <p>(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph. <u>An insurer is responsible for the compliance of its insurance producer with the provisions of this article regardless of whether the insurer contracts for performance of a function required under this subdivision and regardless of the insurer's compliance with subdivision (b) of this paragraph.</u></p> <p>(b) An insurer's supervision system under paragraph (1) shall include <u>reasonable</u> supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Reasonable Monitoring <u>monitoring</u> and, as appropriate, conducting</p>

	<p>audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.</p> <p>(3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.</p> <p><u>(4) The insurer shall maintain reasonable procedures to ensure producers adequately disclose information as required by this regulation.</u></p>
<p>NYS DFS – Based on Final Rule 187</p>	<p>F. <u>(1) In addition to the requirements of subdivisions (a) and (b) of section 224.4 of this Part and except as provided in subdivision (d) of section 224.4 of this Part, an insurer shall not effectuate a sales transaction with respect to its policies unless there is reasonable basis to believe that the sales transaction is suitable based on the consumer's suitability information provided by the consumer and without regard to the availability of products, services, and transactions of companies other than the insurer. This subdivision (a) shall not apply to a sales transaction that results from the exercise of a contractual right in a policy.</u></p> <p>(1)(2) (a) An insurer shall establish, maintain and audit a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following standards and procedures for:</p> <p>(a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;</p> <p>(b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;</p> <p>(c) The insurer shall provide product specific training and training materials which explain all material features of its annuity products to its insurance producers;</p> <p>(d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;</p> <p>(e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and</p> <p>(f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the</p>

~~exceptions found, and corrective action taken or recommended, if any.~~

~~(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.~~

~~(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.~~

~~(3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.~~

(i) The collection of a consumer's suitability information with respect to sales transactions involving the insurer's policies;

(ii) The documentation and disclosure of the basis for any recommendation with respect to sales transactions involving the insurer's policies;

(iii) The review of complaints regarding recommendations inconsistent with the best interest of the consumer;

(iv) The auditing and/or contemporaneous review of recommendations to monitor producers' compliance with subdivisions (a) and (b) of section 224.4 of this Part and to identify contraventions of this Part. An insurer may use a reasonable risk-based approach to audit and/or contemporaneously review producers' recommendations to identify recommendations of the greatest risk or violation subdivisions (a) and (b) of section 224.4 of this Part so long as the approach does not focus solely on recommendations posing the greatest risk with no auditing or review of other recommendations.

(b) With respect to a sales transaction that results from the exercise of a contractual right in a policy, an insurer may comply with subparagraphs (b)(1)(i) and/or (b)(1)(ii) of this section by relying on a written certification of compliance with subparagraphs (b)(1)(i) and/or (b)(1)(ii) provided by the producer.

(3) An insurer may contract with a third party to establish and maintain a system of supervision for recommendations of sales transactions involving the insurer's policies.

(4) (a) An insurer may maintain within and across product lines variations in compensation or other incentives that comply with insurance law and the insurance regulations provided that the insurer's compensation and incentive practices, when taken as a whole, are designed to avoid recommendations by producers that are not in the best interest of consumers.

(b) A difference in compensation and incentives based solely on the amount of premium paid among policies shall not be deemed to violate subparagraph (a) of this paragraph.

	<p><u>(3) An insurer shall be responsible for ensuring that every producer recommending any transaction with respect to the insurer’s policies is adequately trained to make the recommendation in accordance with the provisions of this Part, but an insurer shall not be required to warrant that a producer is acting in the consumer’s best interest.</u></p> <p><u>(4) An insurer shall establish and maintain procedures designed to prevent financial exploitation and abuse. For purposes of this subdivision, “financial exploitation and abuse” means improper use of an adult’s funds, property or resources by another individual, including fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.</u></p> <p><u>(5) An insurer of an in-force policy shall provide to a consumer all policy information reasonably requested by the consumer.</u></p> <p><u>(6) Where a producer is authorize by an insurer to offer different versions of an insurer’s product, one with a fee-based structure and one with a commission-based structure, an insurer shall provide to the consumer a comparison, in a form acceptable to the superintendent, showing the differences between the products. An insurer may also include additional information related to the differences in the producer’s compensation structure for the different versions of the insurer’s product.</u></p> <p><u>(7) In the case of a proposed replacement:</u></p> <p><u>(i) The replaced insurer shall provide to a producer all relevant policy information that is necessary for the evaluation of the replacement; and</u></p> <p><u>(ii) The replacing insurer shall provide policy information in accordance with Part 51 of this Title (Insurance Regulation 60), regardless of whether there exists any specific section for the inclusion of the information within the disclosure statement set forth in Appendices 10A and 10B of Part 51.</u></p> <p><u>(8) The insurer shall take appropriate corrective action for any consumer harmed by a violation of this Part by the insurer, the producer, or any third party with whom the insurer contracts. In determining any penalty or other disciplinary action against an insurer, the superintendent may consider as mitigation any appropriate corrective action taken by the insurer, or whether the violation was part of a pattern or practice on the part of the insurer.</u></p>
<p>Industry Coalition</p>	<p>F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s and its insurance producers’ compliance with this regulation <u>by the insurer and by producers authorized to recommend the insurer’s annuity products</u>, including, but not limited to, the following:</p> <p>(a) The insurer shall maintain reasonable procedures to inform its insurance <u>producers authorized to recommend the insurer’s annuity products</u> of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;</p> <p>(b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance <u>producers authorized to recommend the insurer’s annuity products</u> to comply with the requirements of section 7 of this</p>

	<p>regulation;</p> <p>(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers <u>authorized to recommend the insurer's annuity products</u>;</p> <p>(d) The insurer shall maintain procedures for review of each recommendation <u>of its annuity products</u> prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;</p> <p>(e) The insurer shall maintain reasonable procedures to detect recommendations <u>of its annuity products</u> that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and</p> <p>(f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.</p> <p>(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.</p> <p>(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.</p> <p>(3) An insurer is not required to <u>consider or have knowledge of other insurers' annuity products that a producer could have recommended to a consumer or</u> include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer <u>that the producer is authorized to recommend</u>.</p>
CFA/CEJ	<p>F.I. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation. <u>An insurer may contract with a third party to establish and maintain a system of supervision with respect to producers.</u></p> <p>, including, but not limited to, the following:</p> <p>_____ (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;</p>

~~(b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;~~

~~(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;~~

~~(d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;~~

~~(e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and~~

~~(f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.~~

~~(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.~~

~~(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.~~

~~(3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.~~

G. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

- (1) Truthfully responding to an insurer's request for confirmation of suitability information;**
- (2) Filing a complaint; or**
- (3) Cooperating with the investigation of a complaint.**

<p>ACLI</p>	<p>G. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:</p> <ul style="list-style-type: none"> (1) Truthfully responding to an insurer’s request for confirmation of suitability<u>consumer profile</u> information; (2) Filing a complaint; or (3) Cooperating with the investigation of a complaint.
<p>CFA/CEJ</p>	<p>G. An <u>insurer or</u> insurance producer shall not dissuade, or attempt to dissuade, a consumer from:</p> <ul style="list-style-type: none"> (1) Truthfully responding to an insurer’s request for confirmation of suitability<u>best interest analysis</u> information; (2) Filing a complaint; or (3) Cooperating with the investigation of a complaint.
<p>IID</p>	<p>G. An insurance<u>Neither a</u> producer <u>nor insurer</u> shall not dissuade, or attempt to dissuade, a consumer from:</p> <ul style="list-style-type: none"> (1) Truthfully responding to an insurer’s request for confirmation of suitability information; (2) Filing a complaint; or (3) Cooperating with the investigation of a complaint.
<p>NYS DFS – Based on Final Rule 187</p>	<p>G. An insurance<u>Neither a</u> producer <u>nor insurer</u> shall not dissuade, or attempt to dissuade, a consumer from:</p> <ul style="list-style-type: none"> (1) Truthfully responding to an insurer’s request for confirmation of suitability information; (2) Filing a complaint; or (3) Cooperating with the investigation of a complaint.
<p>CDI</p>	<p><u>Section 7. Prohibited Practices</u></p> <p>G.A. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:</p> <ul style="list-style-type: none"> (1) Truthfully responding to an insurer’s request for confirmation of suitability information; (2) Filing a complaint; or (3) Cooperating with the investigation of a complaint.

	<p><u>B. An insurance producer or insurer shall not recommend that a consumer sell or replace variable annuities or other investments that the producer is unauthorized to sell.</u></p> <p><u>C. Neither a producer nor an intermediary shall accept or receive cash or non-cash compensation which is based on having reached target sales levels.</u></p> <p><u>D. Neither a producer nor an intermediary shall create or base a recommendation on incentives (such as target sales goals, quotas, sales contests, or other similar inducements) that would reasonably be expected to cause the insurance producer or intermediary to act on the producer's or intermediary's or insurer's own financial interest, rather than in the consumer's best interest. Nothing in this subsection prohibits a producer from recommending proprietary products.</u></p> <p><u>E. Neither a producer nor an intermediary nor an insurer shall make any materially misleading statements or omissions regarding the annuity transaction.</u></p>
	<p>H. (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.</p> <p>Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p>
<p>ACLI</p>	<p>H. (1) <u>SalesRecommendations</u> made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer <u>salesrecommendations</u> of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.</p> <p>Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p>

IID	<p>H. (1) Sales made in compliance with FINRA requirements<u>rules 2111, 2330, 3110, 3120, 3130 and 3220 and related or successor rules</u> pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if <u>in connection with the sale of an annuity, the broker-dealer and the producer, who also is appropriately registered as a representative with FINRA, have complied with the business rules, controls and procedures at least as effective as those required by FINRA standards of conduct applicable to the suitability and supervision of variable annuity sales.</u> However, nothing in this subsection shall limit the insurance commissioner's ability to <u>investigate and enforce</u> (including investigate) the provisions of this regulation.</p> <p>Drafting Note: Non-compliance with<u>Failure of a producer, who also is a licensed securities representative under the supervision of a broker-dealer, to fully comply with</u> FINRA requirements<u>standards applied to all annuity recommendations</u> means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p>
CDI	<p>H. (1) Sales made in compliance with FINRA requirements pertaining to suitability, <u>best interest standards</u> and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. If, at a minimum, FINRA's standards provide the consumer protections set forth in this regulation. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation. <u>Except as provided in this paragraph, all other provisions of this regulation remain applicable to these broker-dealer sales.</u></p> <p>Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p>
CFA/CEJ	<p>H. (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.</p> <p>Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation. If the SEC or FINRA adopts a best-interest standard for broker-dealers and such standard provides equivalent consumer protection as this model, the model should reference that SEC or FINRA standards. However, compliance with a FINRA suitability standard does not provide such consumer protection equivalence and cannot substitute for compliance with a best interest standard of care.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably</p>

	appropriate to assist the FINRA member broker-dealer to maintain its supervision system.
Jackson/AXA (alternative revision in place of suggested revision to Section 4-Exemptions)	<p>H. (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions, <u>and sales made by a specified fiduciary in compliance with applicable U.S. Securities and Exchange Commission (SEC) and/or federal banking requirements</u>, shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner’s ability to enforce (including investigate) the provisions of this regulation.</p> <p>Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p>
Suggested Additional Subsections	
ACLI	<p><u>? The mere receipt by an insurance producer, or the insurer where no producer is involved, of any compensation, including health, retirement or other employee benefits, for or related to a recommendation is not inconsistent with the requirements of this regulation. The fact that an insurance producer, or the insurer where no producer is involved, offers or recommends proprietary or a limited range of annuity products (including underlying sub-accounts) or product types is not inconsistent with the requirements of this regulation.</u></p> <p><u>? Nothing herein shall impose on an insurer or an insurance producer any continuing obligation to the consumer under this regulation after the recommended annuity is issued.</u></p>
NYS DFS – Based on Final Rule 187	<p><u>? A producer shall not make a recommendation to a consumer to enter into a sales transaction unless the producer has a reasonable basis to believe that the consumer has the financial ability to meet the financial commitments under the policy.</u></p> <p><u>? A producer shall not make a recommendation to a consumer to enter into a sales transaction about which the producer has inadequate knowledge.</u></p> <p><u>? A producer shall not use a title or designation of financial planner, financial advisor or similar title unless the producer is properly licensed or certified and actually provides securities or other non-insurance financial services. Although a producer may state or imply that a sales recommendation is a component of a financial plan, a producer shall not state or imply to the consumer that a recommendation to enter into a sales transaction is comprehensive financial planning, comprehensive financial advice, investment management or related services unless the producer has a specific certification or professional designation in that area.</u></p> <p><u>? Any requirement applicable to a producer pursuant to this Part shall apply to every producer who materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support on generic client information, or the</u></p>

	<p><u>provision of education or marketing material, does not constitute participating in the making of a recommendation.</u></p> <p><u>?. Nothing in this Part shall be construed to prohibit the payment to a producer of any type or amount of cash or non-cash compensation, including pension and welfare benefits, and any other form of compensation that is otherwise permitted under the Insurance Law and the insurance regulations.</u></p> <p><u>?. A producer may limit the range of policies recommended to consumers based on a captive or affiliation agreement with a particular insurer, where the producer prominently discloses to each consumer in writing prior to a recommendation, in a form acceptable to the superintendent, the nature of the agreement and the circumstances under which the producer will and will not limit the recommendations. For example, without limitation, these circumstances may include where a producer primarily recommends policies of a particular insurer and secondarily recommends policies from one or more other insurers when: (1) the primary insurer does not offer a policy that meets the consumer’s needs or objectives, (2) the type of policy in the best interest of the consumer is not available from the primary insurer, (3) the underwriting criteria of the primary insurer are not favorable for the consumer, or (4) the offer made by the primary insurer is not acceptable to the consumer. The producer shall adhere to the conditions in the disclosure with each consumer. The disclosure is insufficient if it merely states that the producer may limit recommendations without specific disclosure of the extent to which recommendations are, in fact, limited.</u></p>
CFA/CEJ	<p><u>?. A producer shall not make a recommendation to a consumer to enter into a transaction unless the producer has a reasonable basis to believe that the consumer has the financial ability to meet the financial commitments under the policy.</u></p> <p><u>?. An insurer shall be responsible for ensuring that every producer recommending any transaction with respect to the insurer’s products is adequately trained to make the recommendation.</u></p> <p><u>?. A producer shall not make a recommendation to a consumer to enter into a transaction about which the producer has inadequate knowledge.</u></p>
Section 7. Insurance Producer Training	
A. An insurance producer shall not solicit the sale or replacement of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer’s standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.	
CFA/CEJ	A. An insurance producer shall not solicit the sale or replacement of <u>life insurance or</u> an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity product and the insurance producer is in compliance with the insurer’s standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
IID	Section 7. Insurance Producer Training

	<p>A. An insuranceA producer shall not solicit the sale or replacement of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.</p>
	<p>B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.</p> <p>(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.</p> <p>(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.</p> <p>(3) The training required under this subsection shall include information on the following topics: (a) The types of annuities and various classifications of annuities; (b) Identification of the parties to an annuity; (c) How product specific annuity contract features affect consumers; (d) The application of income taxation of qualified and non-qualified annuities; (e) The primary uses of annuities; and (f) Appropriate sales practices, replacement and disclosure requirements.</p> <p>(4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.</p> <p>(5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].</p> <p>(6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].</p> <p>(7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].</p> <p>(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.</p> <p>(9) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that</p>

has a reporting arrangement with approved insurance education providers.	
ACLI	<p style="text-align: center;">*****</p> <p>(3) The training required under this subsection shall include information on the following topics: (a) The types of annuities and various classifications of annuities; (b) Identification of the parties to an annuity; (c) How product specific annuity contract features affect consumers; (d) The application of income taxation of qualified and non-qualified annuities; (e) The primary uses of annuities; and (f) Appropriate <u>standard of conduct</u>, sales practices, replacement and disclosure requirements.</p> <p style="text-align: center;">*****</p> <p>(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.</p> <p><u>(9) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.</u></p> <p>(9) <u>(10)</u> An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.</p> <p style="text-align: center;">*****</p>
IID	<p>B. (1) (a) An insurance<u>A</u> producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.</p> <p>(b) Insurance producers<u>Producers</u> who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.</p> <p style="text-align: center;">*****</p> <p>(3) The training required under this subsection shall include information on the following topics: (a) The types of annuities and various classifications of annuities; (b) Identification of the parties to an annuity; (c) How product specific annuity contract features affect consumers; (d) The application of income taxation of qualified and non-qualified annuities; (e) The primary uses of annuities; and (f) Appropriate sales practices, replacement and disclosure requirements, <u>including the requirements of this regulation.</u></p> <p>(4) <u>(a)</u> Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's <u>annuity</u> products. Additional topics may be offered in conjunction with and in addition to the required outline. <u>(b) A training course that complies with the requirements of FINRA Rule 1250 meets the requirements of Paragraph (3).</u></p> <p style="text-align: center;">*****</p>

	<p>(9) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.</p>
<p>CDI</p>	<p>B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.</p> <p><u>Drafting Note: If a state requires more than four (4) hours of initial training on annuities, the state may instead require additional course hours in accordance with state law.</u></p> <p>(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.</p> <p>(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer. <u>States also may require producers to comply with additional continuing education requirements regarding annuities prior to license renewal.</u></p> <p>(3) The training required under this subsection shall include information on the following topics: (a) The types of annuities and various classifications of annuities; (b) Identification of the parties to an annuity; (c) How product specific annuity contract features<u>fixed, variable and indexed annuities</u> affect consumers; (d) The application of income taxation of qualified and non-qualified annuities; (e) The primary uses of annuities; and (f) Appropriate sales practices, replacement and disclosure requirements; <u>and (g) Prohibited sales practices, the recognition of indicators that a proposed insured may lack the short-term memory or judgment to knowingly purchase an insurance product, and fraudulent and unfair practices for sales of annuities.</u></p> <p style="text-align: center;">*****</p> <p>(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.</p> <p>(9)<u>(8)</u> An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.</p>

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B. (1) (a) An insurance producer who engages in the sale of life insurance or annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.

(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(3) The training required under this subsection shall include information on the following topics: (a) The types of life insurance and annuities and various classifications of life insurance and annuities; (b) Identification of the parties to ~~an~~the life insurance or annuity; (c) How the product-specific life insurance policy or annuity contract features affect consumers; (d) The application of income taxation of qualified and non-qualified annuities; (e) The primary uses of life insurance and annuities; and (f) Appropriate sales practices, replacement, illustration and disclosure requirements.

(4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(5) A provider of a life insurance or ~~an~~ annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].

(6) Life insurance or ~~A~~ annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

(7) Providers of life insurance or annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].

(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

(9) An insurer shall verify that an insurance producer has completed the life insurance or annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Additional Suggested Subsections	
<i>None suggested</i>	
Section 8. Compliance Mitigation; Penalties	
<p>A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:</p> <p>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer’s, or by its insurance producer’s, violation of this regulation;</p> <p>(2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of this regulation; and</p> <p>(3) Appropriate penalties and sanctions.</p>	
ACLI	<p>A. An insurer is responsible for compliance with <u>its obligations under</u> this regulation <u>when a recommendation results in the purchase of its annuity products, and for the training required in Section 7 for producers authorized to sell the insurer’s annuity products.</u> If a violation occurs, either because of the action or inaction of the insurer or its <u>in meeting its obligations under Section 6G, or the action or inaction of an</u> insurance producer <u>in meeting the producer’s obligations under this regulation,</u> the commissioner may order:</p> <p>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer’s, or by its insurance producer’s, violation of <u>its obligations under</u> this regulation, <u>or a producer’s violation of the suitability obligations under Section 6B when recommending the insurer’s annuity product;</u></p> <p>(2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of this regulation; and</p> <p>(3) Appropriate penalties and sanctions.</p>
IID	<p>A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:</p> <p>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by <u>a failure to comply with this regulation by the insurer’s insurer, an entity contracted to perform the insurer’s supervisory duties</u> or by its insurance producer’s <u>the producer, violation of this regulation if a purchase, exchange or replacement of an annuity by the insurer occurs;</u></p> <p>(2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of this regulation; and</p>

	(3) Appropriate penalties and sanctions.
CDI	<p>A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may, <u>in addition to any other available penalties, remedies or administrative actions</u>, order:</p> <p>(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer’s, or by its insurance producer’s, violation of this regulation;</p> <p>(2) A <u>managing general agencyagent, independentproduction</u> agency <u>through which the producer transacts and/or</u> or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of this regulation; and</p> <p>(3) Appropriate penalties and sanctions.</p>
<p>B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.</p> <p>Drafting Note: Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.</p> <p>Drafting Note: A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State’s statute that authorizes the commissioner to impose penalties and fines.</p>	
CDI	<p>B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.</p> <p>Drafting Note: Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.</p> <p>Drafting Note: A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State’s statute that authorizes the commissioner to impose penalties and fines.</p>

	Drafting Note: <u>States that adopt this regulation as a statute may include a section authorizing the commissioner to adopt reasonable rules and regulations and amendments and additions as are necessary to administer this regulation.</u>
Additional Suggested Subsections	
<i>None suggested</i>	
Section 9. [Optional] Recordkeeping	
<p>A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.</p> <p>Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States, this time period may be five (5) years.</p>	
Industry Coalition	<p>A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, <u>disclosures made to the consumer</u> and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.</p> <p>Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States, this time period may be five (5) years.</p>
IID	<p>Section 9. [Optional] Recordkeeping</p> <p>A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, <u>disclosures made to the consumer</u> and other information used in making the recommendations that were the basis for insurance transactions for [insert number] <u>six (6)</u> years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.</p> <p>Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States, this time period may be five (5) years <u>for consistency with Subsection A above.</u></p>

B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

No comments received

Section 12. Effective Date

The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on [insert date], whichever is later.

ACLI	The amendments to this regulation shall take effect six (6) ___ months after the date the regulation is adopted or on [insert date], whichever is later.
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Additional Suggested Model Regulation Sections

CFA/CEJ	<p><u>Section 8. Prohibited Practices</u></p> <p><u>An insurance producer or an insurer where no producer is involved:</u></p> <p><u>(1) Shall receive no more than reasonable compensation in making and implementing a recommendation;</u></p> <p><u>(2) Shall not make any materially misleading statements or omissions regarding the recommendation or transaction; and</u></p> <p><u>(3) Shall not create, or base a recommendation on, incentives (such as sales quotas, sales contests, or other similar inducements) that would reasonably be expected to cause the producer to act on the producer’s or insurer’s own financial interest, rather than the customer’s best interests. Nothing in this section should be viewed as prohibiting a producer or insurer from receiving reasonable compensation or recommending proprietary products.</u></p>
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NYS DFS – Based on Final Rule 187	<p><u>§ 224.5 Duties of insurers and producers with respect to in-force transactions.</u></p> <p><u>(a) In recommending an in-force transaction to a consumer, the producer, or the insurer where no producer is involved, shall act in the best interest of the consumer.</u></p> <p><u>(b) The producer, or insurer where no producer is involved, acts in the best interest of the consumer when:</u></p> <p><u>(1) The producer’s or insurer’s recommendation to the consumer reflects the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use under the circumstances then prevailing. Only the interests of the</u></p>
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consumer shall be considered in making the recommendation. The producer's receipt of compensation or other incentives permitted by the insurance law and the insurance regulations is permitted by this requirement provided that the amount of compensation or the receipt of the incentive does not influence the recommendation; and

(2) There is a reasonable basis to believe the consumer has been reasonably informed of the relevant features of the policy and potential consequences of the in-force transaction, both favorable and unfavorable.

(c) A producer shall not use a title or designation of financial planner, financial advisor or similar title unless the producer is properly licensed or certified and actually provides securities or other non-insurance financial services. Although a producer may state or imply that a sales recommendation is a component of a financial plan, a producer shall not state or imply to the consumer that a recommendation to enter into a sales transaction is comprehensive financial planning, comprehensive financial advice, investment management or related services unless the producer has a specific certification or professional designation in that area.

(d) Any requirement applicable to a producer pursuant to this Part shall apply to every producer who has materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support based on generic client information, or the provision of education or marketing material, does not constitute participating in the making of a recommendation.

(e) A producer shall not make a recommendation to a consumer to enter into an in-force transaction about which the producer has inadequate knowledge.

SEC Best Interest Proposed Rule

§ 240.15l-1 Regulation Best Interest.

(a) Best Interest Obligation.

(1) A broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.

(2) The best interest obligation in paragraph (a)(1) shall be satisfied if:

(i) Disclosure Obligation. The broker, dealer, or natural person who is an associated person of a broker or dealer, prior to or at the time of such recommendation, reasonably discloses to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer, including all material conflicts of interest that are associated with the recommendation.

(ii) Care Obligation.

The broker, dealer, or natural person who is an associated person of a broker or dealer, in making the recommendation exercises reasonable diligence, care, skill, and prudence to:

(A) Understand the potential risks and rewards associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers;

(B) Have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks and rewards associated with the recommendation; and

(C) Have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile.

(iii) Conflict of Interest Obligations.

(A) The broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to identify and at a minimum disclose, or eliminate, all material conflicts of interest that are associated with such recommendations.

(B) The broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with such recommendations.

(b) *Definitions*. Unless otherwise provided, all terms used in this rule shall have the same meaning as in the [Securities Exchange Act of 1934]. In addition, the following definitions shall apply:

(1) *Retail Customer* means a person, or the legal representative of such person, who: (A) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and

(B) Uses the recommendation primarily for personal, family, or household purposes.

(2) *Retail Customer Investment Profile* includes, but is not limited to, the retail customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the retail customer may disclose to the broker, dealer, or a natural person who is an associated person of a broker or dealer in connection with a recommendation.

§ 240.17a-3 Records to be made by certain exchange members, brokers and dealers.

(a)***

(25) For each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is or will be provided:

(i) A record of all information collected from and provided to the retail customer pursuant to § 240.15/-1, as well as the identity of each natural person who is an associated person, if any, responsible for the account.

(ii) For purposes of this paragraph (a)(25), the neglect, refusal, or inability of the retail customer to provide or update any information required under paragraph (a)(25)(i) of this section shall excuse the broker, dealer, or associated person from obtaining that required information.

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§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

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(e)***

(5) All account record information required pursuant to § 240.17a-3(a)(17) and all records required pursuant to § 240.17a-3(a)(25), in each case until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated.

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