

# NY Suitability: What Just Happened?

**Association of Insurance Compliance Professionals –  
New England Chapter E-Day**

Sturbridge, MA

June 6, 2018

Session 5: 10:15-11:30



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Final  
Regulation  
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# Purpose

- (a) Prevents **unfair or deceptive** acts/practices.
- (b) Establishes **standards of conduct** for producers, including that they must act in a competent and trustworthy manner.
- (c) Clarifies the **duties and obligations of insurers** and fraternalists so that any transaction with respect to policies is in the best interest of the consumer.
- (d) Clarifies the **duties and obligations of producers** when making recommendations to consumers 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.



What about  
other  
agencies'  
standards?

Assessment  
of Public  
Comment:

- **DFS Supports consistency where appropriate**
- **BUT**
  - CFP has its own best interest standard proposal
  - Consistent with DOL where “practicable and appropriate”
- DFS has recommended NAIC consider this draft
- DFS is the sole regulator for the overwhelming majority of insurance activities occurring in NY.



Applies to any transaction or recommendation with respect to a transaction.



Note:

transaction or recommendation proposed or in-force policy

Applicability



## Exemptions (Changed in Round 2)

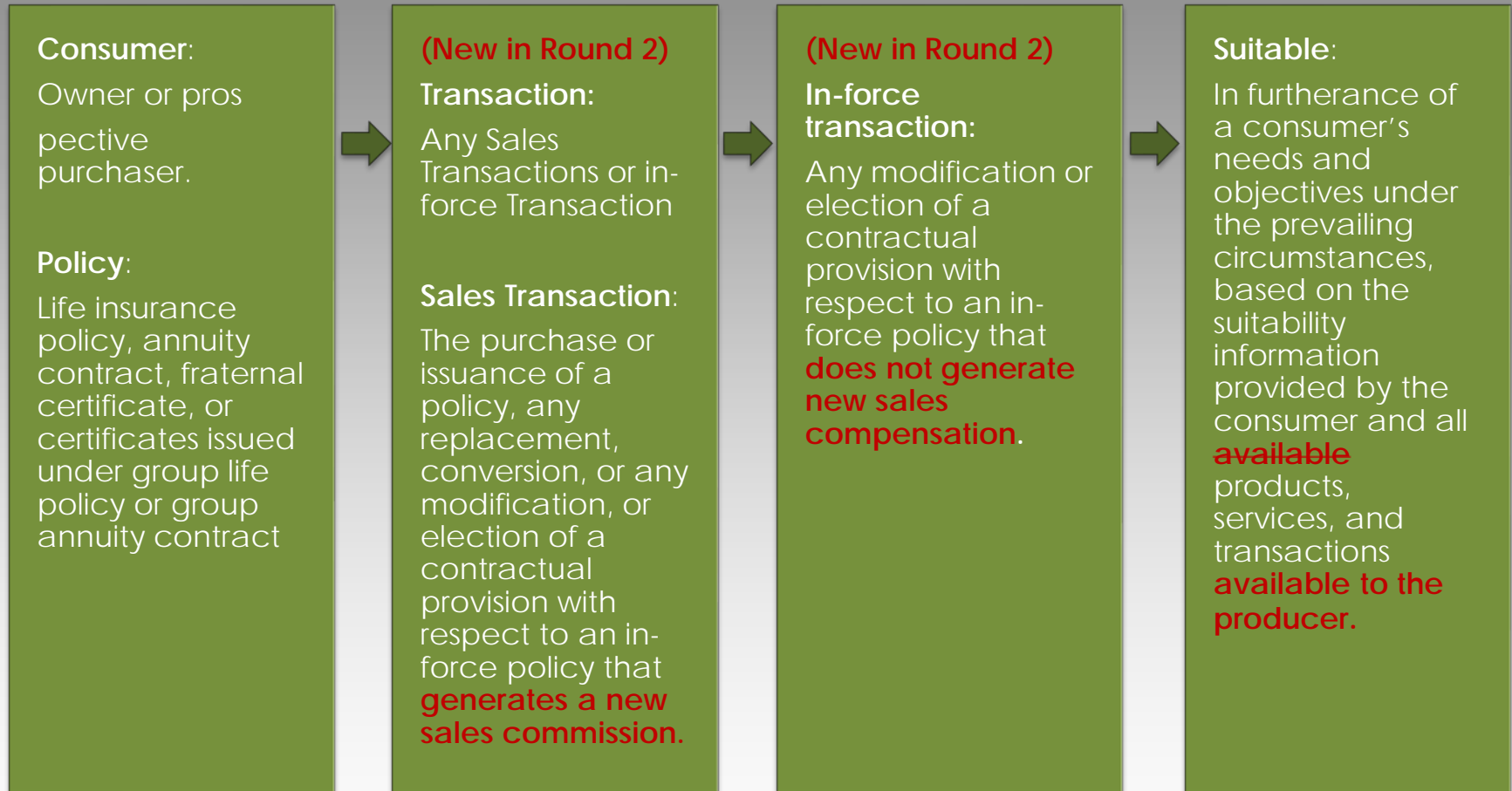
DFS wants a consistent standard of care across life and annuity product lines to promote a level playing field.

Unless otherwise indicated, the regulation **does NOT apply** to the following transactions:

- Application is solicited and received in response to a generalized offer by mail or other methods without producer involvement.
- A policy funding
  - a pension or welfare benefit plan covered by ERISA or a tax qualified plan, terminal funding contracts
  - True COLI/BOLI or a non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor,
  - Credit Life – Group only
  - Settlement agreement
  - Life settlement contract



# Selected Definitions (Changed in Round 2)



# Recommendation (Changed in Round 2)

One or more statements that reasonably may be interpreted as advice; and



Results in a consumer entering into or refraining from entering into a transaction; or



Intended by the producer (or insurer when no producer) to result in a consumer entering into or refraining from entering into a transaction.



**NOT: general factual information, e.g. advertising, marketing materials, general education information on insurance/ financial products and general administrative services.**





(Changed  
in Round 2)

# Term Suitability Information as relevant to the consumer

Age

Annual income

Financial situation and needs, including financial resources used for funding the policy

Financial objectives

Intended use of the policy, including any riders

Financial time horizon, including the duration of existing liabilities and obligations

Existing assets, including investment and insurance holdings

Tolerance of non-guaranteed elements in the policy, including variability in premium, cash value, death benefit, or fees;

**Any other information provided which, in reasonable judgement of producer, or the insurer if no producer, is relevant to the suitability of the transaction.**



(Added in  
Round 2)  
Suitability  
Information  
for *any*  
*other* policy

Age

Annual income

Financial situation and needs, including financial resources used for funding the policy

Financial experience

Financial objectives

Intended use of the policy, including any riders

Financial time horizon, including the duration of existing liabilities and obligations

Existing assets, including investment and insurance holdings

Liquidity needs

Liquid net worth

Risk tolerance

Tolerance of non-guaranteed elements in the policy, including variability in premium, cash value, death benefit, or fees;

Tax status

**Any other information provided which, in reasonable judgement of producer, or the insurer if no producer, is relevant to the suitability of the transaction.**



A recommendation is based on an evaluation of the **relevant** suitability information and it reflects the care, skill, prudence, and diligence that a prudent person **acting in like capacity &** familiar with such matters would use under the circumstances. The financial or other interests of the producer, insurer, or any party **other than the consumer shall not be considered in any respect in making the recommendation;**

The **sales** transaction is suitable; and

There is a reasonable basis to believe

- the consumer is reasonably informed about the product (including secondary guarantees, indexed features, exclusions – potential consequences favorable and unfavorable)
- **Any differences in features between fee-based and commission-based versions of the policy,**
- the consumer would benefit from certain features, and
- the particular policy as a whole is suitable based on suitability information.

(Changed  
in Round 2)  
Acting in  
the best  
interest



# If the transaction is a replacement

The suitability consideration must include:

- whether the consumer will incur a surrender charge, increased premium or fees, decreased coverage duration, decreased death benefit/income amount, adverse change in health rating, have a new surrender period, lose existing benefits, tax implications, investment advisory fees, premium loads or charges for riders or product enhancements,
- a determination that the consumer would benefit from policy enhancements such as decreased premium or fees, increased coverage duration, increased death benefit or income amount, and
- whether the consumer has had another policy replacement in the last 36 months.



(Changed in  
Round 2)  
Duties of  
insurers/producers

In recommending a transaction to a consumer, the insurer or producer must act in the best interest of the consumer.

Before making a transaction recommendation, there must be a reasonable effort to obtain the consumer's suitability information.

An insurer shall not issue or modify a policy recommended to a consumer unless there is a reasonable basis to believe the policy is suitable.

Disclose all relevant suitability considerations and product information – favorable or unfavorable – that provide the basis for any recommendations.

**Document the basis of the recommendation and the facts/analysis to support it; Obtain the signed refusal if applicable; obtain sales transaction is not recommended**

Determine that the consumer has the financial ability to meet the financial commitment under the policy.



**A producer cannot 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.**

Commissions are ok – the regulation does not prohibit the payment to a producer of any type or amount of compensation otherwise permitted by the insurance law.

**Applies to every producer who has 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.**

# (Changed in Round 2) New Rules: Producers



(Added in  
Round 2)

## Limitations on recommendations based on producer affiliations

- Recommendations may be limited based on captive or affiliation agreement with a particular insurer IF there is prominent disclosure to EACH consumer in writing prior to making the 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 recommendations.
- For example: Where producer primarily recommends policies of a particular insurer and secondarily recommends from one or more others:
  - Primary insurer does not offer a policy that meets the consumer's needs or objectives
  - The type of policy in the best interest of the consumer is not available from the primary insurer
  - The offer made by the primary insurer is not acceptable to the consumer.
- Producer must adhere to these conditions with EACH consumer.



(Added in  
Round 2)

Limitations on  
recommend-  
ations based  
on producer  
affiliations

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.





(Added in Round 2)  
Duties of  
insurers/producers  
on in-force  
transactions

In recommending an in-force transaction to a consumer, the insurer or producer must act in the best interest of the consumer.

There is a basis to believe the consumer has been reasonably informed of the features and potential consequences of the in-force transaction, favorable and unfavorable.

The producer must have adequate knowledge to make the recommendation.

Applies to all producer who has participated in making the recommendation regardless of whether there has been direct contact.

Not state or imply that a recommendation to enter into an in-force transaction is financial planning, comprehensive financial advice, investment management without specific qualifications and actual non-insurance services.



# (Changed in Round 2)

## New Supervision Rules: Insurers

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Shall establish, maintain, and audit a system of supervision that is reasonably designed to achieve compliance – at both insurer and producer level

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- For collection of consumer suitability information
  - Documentation and disclosure of the basis for any recommendations for sales transactions
- 
- The review of complaints regarding recommendations inconsistent with best interest of the consumer
  - Prevention of incentives that are intended or would reasonably be expected to cause producers to make recommendations not in the best interest.
- 

Auditing and/or contemporaneous review of recommendations to monitor producer compliance and identify violations. A risk-based approach is permitted, so long as the approach doesn't focus exclusively on the greatest risk without auditing other recommendations.



# (Changed in Round 2)

## New Supervision Rules: Insurers (CONT)

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Every producer must be sufficiently trained in insurer's products to make recommendations

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Every insurer must have procedures designed to prevent financial exploitation and abuse. (improper use of an adult's funds, property, or resources by another individual. It includes fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers and denial of access to assets.

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An insurer must provide a consumer with all policy information that is reasonably requested in relation to an in-force policy.

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Where different versions of a product are offered, one with a fee-based structure and one with a commission-based structure, an insurer must provide the consumer with a comparison in a form that is acceptable to the superintendent, showing the differences between the products.



(Added in  
Round 2)  
Corrective  
Actions

An insurer must take appropriate corrective action when a consumer is harmed by a violation of the suitability regulation

The Superintendent *may* factor in any appropriate corrective action that an insurer has taken when determining a penalty or disciplinary action.

The Superintendent may consider whether the violation was a part of a pattern and practice or an isolated incident when determining a penalty or disciplinary action.



# Questions?



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*Thank you!*

