SOUTH DAKOTA
DEPT. OF LABOR
& REGULATION

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Annuity Best Interest - Effective 1/01/2023

This Frequently Asked Questions (FAQ) document is intended to specifically address questions that are likely to arise as South Dakota has adopted the new Annuity Best Interest Standard. The bill codifying this standard can be found here: sdlegislature.gov/Session/Bill/23076

This FAQ document does not expand the content of the law but is provided as interpretive guidance regarding certain aspects of its provisions.

Best Interest Standard of Conduct

1. **What is the best interest standard of conduct, and how would a producer or insurer satisfy it?**
    - To satisfy the best interest obligation, a producer or insurer must satisfy four obligations: 1) care, 2) disclosure, 3) conflict of interest, and 4) documentation.
    - To satisfy the four obligations, when making a recommendation, producers must:
        - Know the consumer's financial situation, insurance needs and financial objectives;
        - Understand the available recommendation options;
        - Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives;
        - Communicate the basis of the recommendation to the consumer;
        - Disclose their role in the transaction, their compensation, and any material conflicts of interest; and
        - Document, in writing, any recommendation and the justification for such recommendation.
2. **Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?**
    - Yes, the standard applies to all producers who exercise material control or influence in the making of a recommendation and have received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer.
    - Activities such as providing or delivering marketing or educational materials, product wholesaling or other back-office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.
3. **What is the intent of language in SDCL 58-33A-16.1, which states "Producers shall be held to standards applicable to producers with similar authority and licensure?"**
    - The intent of this language is to ensure that an insurance producer's recommendation is compared only to other insurance producers as opposed to being compared to broker dealers registered under federal or state securities law, investment advisers registered under federal or state securities law or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA).
    - As regards "authorized" in SDCL 58-33A-16.1, producer recommendations will be evaluated by reviewing those products a producer has access to at the time of the recommendation.

4. **What does the Division of Insurance view as clearly not violating the conflicts of interest duty?**
   - Certain facts, taken in isolation, will not be viewed as conflicts of interest by the Division of Insurance. These include merely being a minority owner of an agency, being employed by a family member, or being a majority owner in an agency where that is disclosed to the consumer.

5. **To satisfy the disclosure obligation, SDCL 58-33A-16.5 requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form posted on the Division's website prior to a recommendation or sale of an annuity. Can a producer provide the form at the initial client meeting?**
   - Yes, a producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting.

6. **Is the producer required to update the "Insurance Agent (Producer) Disclosure for Annuities" form and provide it again or can the producer provide it once and satisfy this obligation?**
   - Yes, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation or sale, the producer is required to provide the consumer with an updated form.

Insurer's Responsibility

1. **Does the revised law require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?**
   - No, but insurers must establish and maintain procedures to detect sales that are not in the consumer's best interest. The revisions add three additional responsibilities for insurers in supervising annuity sales.
     - To assess whether a producer has provided to the consumer the information required by the revised law.
     - To identify and address suspicious consumer refusals to provide consumer profile information.
     - To identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

2. **SDCL 58-33A-20 requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices is this provision intended to address?**
   - The requirements of SDCL 58-33A-20 are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product. The law prohibits any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

Training

1. **When does the new Annuity Best Interest training requirement become effective?**
   - The new requirement is effective January 1, 2023.

2. **Who must take this training?**
   - All resident and non-resident producers who engage in the sale, solicitation, or negotiation of annuities products in South Dakota.

3. **<u>Is there a new annuity producer training requirement for best interest?</u>**
    - Yes, any producer who has already completed the existing annuity training requirement prior to January 1, 2023, must complete additional training prior to June 30, 2023.
        - Resident and non-resident producers licensed and certified to sell annuity products in South Dakota prior to January 1, 2023, must complete a 1-hour updated annuity best interest course no later than June 30, 2023.
        - Resident and non-resident producers licensed on or after January 1, 2023, must complete a one-time 4-hour annuity best interest course before selling, soliciting, or negotiating annuity business in South Dakota.
    - Annuity Best Interest training courses with substantially similar content, completed in another state and based on the NAIC 2020 Annuity Model Law will satisfy the training requirements for South Dakota.

4. **<u>How will producer training reciprocity be interpreted between Suitability and Best Interest states?</u>**
    - South Dakota will require all producers, whether resident or non-resident, to complete an "Annuity Best Interest" training course. Reciprocity will be granted to producers who have completed a training based on the NAIC 2020 Annuity Model law in another state.

5. **<u>What are the consequences of failing to satisfy the training requirements of the revised model?</u>**
    - A producer who fails to satisfy the training requirements is not permitted to recommend or sell annuities. A producer who recommends or sells annuities without completing the required training would be in violation of South Dakota law.

6. **<u>If a producer who was previously authorized to sell annuities fails to satisfy the training requirements of the revised model by June 30, 2023, can they recommend or sell annuities in the future?</u>**
    - Yes, a producer who has completed the training required under the prior version of the model can requalify by completing the new 4-hour annuity best interest training course prior to recommending or selling annuities.

7. **<u>Does the training requirement apply to producers who are registered with FINRA?</u>**
    - Yes, all producers who engage in the sale of annuities, including those registered with FINRA, must complete the training required by the revised model.