

SUITABILITY IN ANNUITY TRANSACTIONS FAQ'S

If you do not sell annuities in Virginia, you do not need to take any further action.

Rules Governing Suitability in Annuity Transactions ([14VAC5-45](#) of the Virginia Administrative Code) have changed. The effective date of the revised Rules is September 1, 2021. It includes several new definitions and requires; (1) insurers and agents to follow specified best interest obligations when recommending an annuity; (2) agents to use consumer disclosure forms; and (3) agents to complete annuity suitability training which includes the best interest standard.

BEST INTEREST STANDARD OF CONDUCT

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 an 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.

What types of recommendations fall under the best interest standard of conduct?

All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in [14VAC5-45-20](#), a "recommendation" is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A 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.

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 can apply, if under [14VAC5-45-20](#), a producer who has exercised material control or influence in the making of a recommendation and has 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.

CARE OBLIGATION

What is the intent of language in [14VAC5-45-40\(1\)\(c\)](#), which states “Producers shall be held to standards applicable to producers with similar authority and licensure?”

The intent of this language is to help to ensure that in any compliance or enforcement action, a producer’s recommendation is compared only to other producers as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsor.

DISCLOSURE OBLIGATION

To satisfy the disclosure obligation, [14VAC5-45-40 \(2\)\(a\)](#) requires a producer to provide the completed “Insurance Agent (Producer) Disclosure for Annuities” form in Appendix A 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.

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 expected to provide the consumer with an updated form.

CONFLICT OF INTEREST OBLIGATION

Why did the Bureau determine that "cash and non-cash compensation" is not a material conflict of interest (as defined in [14VAC5-45-20](#))?

Under the revised Regulation, a producer is required to act in the best interest of the consumer without placing their or the insurer’s financial interest ahead of the consumer’s interest. The revised Regulation contains a disclosure requirement in which producers must prominently disclose to a consumer, using a disclosure form, their relationship with the consumer, the role

they will play in the transaction and a description of the cash and non-cash compensation they will receive. In light of these robust disclosures, and the fact most consumers recognize producers will be compensated for their work, the Bureau determined that compensation is not a material conflict of interest.

The Bureau also determined that general incentives regarding production levels with no emphasis on any particular product do not create an unanticipated conflict of interest.

However, the Bureau did conclude that sales contests, sales quotas, bonuses and non-cash compensation based on sales of specific annuities within a limited time frame should be avoided. Accordingly, the revised Regulation requires insurers to identify and eliminate these arrangements [\(14VAC5-45-40\(C\)\(2\)\(h\)\)](#).

As defined in [14VAC5-45-20](#), a material conflict of interest does not include cash compensation or non-cash compensation. What other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in [14VAC5-45-40\(A\)\(3\)](#)?

The revised Regulation defines material conflict of interest as “a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.” Cash and non-cash compensation are not considered to be material conflicts of interest, though the revised Regulation does require disclosure about producer compensation and impose restrictions on certain types of non-cash compensation, as described below. An ownership interest (such as where a producer has a material ownership interest in an insurance company whose products the producer is authorized to recommend) is one example of a material conflict of interest that would be subject to the revised Regulation’s conflict of interest obligation. Depending on the particular facts and circumstances, a producer could also be deemed to have a material conflict of interest if, for example, he or she borrowed funds directly from a certain insurer (except for loans taken by a producer under his or her own personal insurance policy or contract) or has a spouse, partner or a close relative who works as a senior executive for a particular insurer.

Under [14VAC5-45-40\(A\)\(3\)](#), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage and disclose a material conflict of interest?

Examples?

The appropriate steps to satisfy the obligation to identify and avoid or reasonably manage and disclose material conflicts of interest will depend on the specific facts and circumstances. In some cases, material conflicts of interest can be effectively managed by a producer by informing his or her client of the conflict and answering any questions the client may have regarding the conflict and confirming that the client is willing to continue working with the producer. In other instances, informed disclosure alone may be insufficient and is not in the client’s best interest or that puts the producer’s own financial interests ahead of the client’s interest. In such instances, a producer could, for example, consult with his or her manager, supervisor or agency principal to assess whether a conflict is inappropriately influencing the impartiality of the producer’s

recommendations. Finally, there may be material conflicts of interest that cannot be effectively mitigated through informed disclosure and additional measures. In those situations, the producer would have to avoid engaging in the activity or relationship that would give rise to the conflict, or, alternatively, abstain from making the recommendation. In all cases, the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives.

SUPERVISION SYSTEM

Does the revised Regulation require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?

No, but the revised Regulation does add additional insurer supervision requirements by requiring insurers to establish and maintain reasonable procedures in three additional areas:

- To assess whether a producer has provided to the consumer the information required by the revised Regulation.
- 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.

14VAC5-45-40 (C)(2)(h) 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 provision intended to address?

As the provision states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a specified or limited period of time are prohibited and should be identified and eliminated. For example, this provision would apply where a producer's eligibility for a particular bonus is tied to his or her sales of a particular annuity product during a particular month. However, the requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on the sale of specific annuities within a limited period of time. 14VAC5-45-40 (C)(2)(h) reflects the efforts for these revisions to be compatible with other financial service rule updates, such as the recent prohibition on most sales contests, quotas and bonuses tied to the sales of particular offerings that the SEC and FINRA have implemented. See Reg. BI and FINRA Rules, including Rules 2111, 2320, 2341 and 5110.

ANNUITY SUITABILITY BEST INTEREST TRAINING FAQ'S

Agents licensed prior to September 1, 2021 who sell annuities in Virginia must complete a one-time one-hour course which includes the best interest standard by March 1, 2022. Agents licensed on/after September 1, 2021, must complete a one-time four-hour course which includes the best interest standard prior to engaging in the sale of annuities in Virginia. Starting September 1, 2021, licensees can lookup available courses at www.sircon.com/virginia.

Insurers are responsible for verifying that an agent selling an annuity product in Virginia on their behalf, on or after September 1, 2021, has completed the requisite Annuity Suitability Best Interest training. (See 14 VAC 5-45-45 B 11 of the Virginia Administrative Code.)

When does the new Annuity Suitability Best Interest training requirement become effective?

The new requirement was adopted September 1, 2021 and is effective March 1, 2022.

Who must take this training?

All resident producers who engage in the sale, solicitation, or negotiation of annuity products, and those non-residents who have not completed substantially similar training including the Best Interest standard in another state must complete a Virginia approved course.

Where do I find a list of approved annuity suitability training courses?

Starting September 1, 2021, visit www.sircon.com/virginia to review a list of approved providers, courses and course offerings. Look for Annuity Suitability Best Interest courses.

Will resident agents exempt from Virginia CE have to take the annuity suitability training?

Yes. The training is a separate requirement that all residents selling annuities must complete.

Can I use the one-time Virginia approved Annuity Suitability Best Interest training course for my Virginia CE requirements?

Yes. The course can be applied towards resident CE requirements.

Who is responsible for verifying the Best Interest standard training?

Insurers are responsible for verifying that a newly licensed agent selling an annuity product in Virginia on their behalf, on or after September 1, 2021, has completed the one-time four-hour annuity suitability best interest training. (See 14 VAC 5-45-45 B 11 of the Virginia Administrative Code.)

What if a licensee already took a 4-hour Annuity Suitability training course?

Agents licensed prior to September 1, 2021 who sell annuities in Virginia must complete a one-time one-hour course which includes the Best Interest standard by March 1, 2022. All others will be required to take the new 4-hour Annuity Suitability Best Interest standard course. Insurers are responsible for verifying that agent's licensed prior to September 1, 2021, selling an annuity

product in Virginia on their behalf, have completed the one-time one-hour Annuity Suitability Best Interest training. (See 14 VAC 5-45-45 B 11 of the Virginia Administrative Code.)

Will Virginia accept a home state’s equivalent course in Annuity Suitability Best Interest?

Virginia will accept a non-resident’s annuity suitability training taken in another state, provided it includes the Best Interest standard. This mandated training will be permanently reflected on the CE Transcript for residents, as provided by Sircon.

When will Education Providers be able to submit courses meeting this requirement?

We anticipate having the Best Interest Annuity course categories available in July 2021 and we will notify providers of its availability.

Is a licensee eligible to take the 1-hour best interest course if they had previously completed annuity training requirements in a state other than Virginia and has since relocated to Virginia?

While it is available, the 1-hour Best Interest course supplement could be applied to meet Virginia’s standards if the agent can prove they have met the annuity suitability standards of their home state with a certificate of completion. Insurers are responsible for verifying that an agent selling an annuity product in Virginia on their behalf, on or after September 1, 2021, has completed the requisite Annuity Suitability Best Interest training. (See 14 VAC 5-45-45 B 11 of the Virginia Administrative Code.)

If a current Annuity Suitability course already has the new Best Interest elements that meet the definition, can the course be resubmitted as an Annuity Suitability Best Interest course?

Yes, based on meeting the Best Interest standard, providers may resubmit courses in the Annuity Suitability Best Interest categories once they have become available.

Visit <https://www.scc.virginia.gov/DocketSearch>, click on “Search by Case Information” and enter **Case Number INS-2021-00001** in the “Enter Case Number” box to review the revised rules.