

COMPLIANCE BULLETIN

New York Regulation 187: Suitability and Best Interests in Life Insurance and Annuity Transactions

To: All producers licensed in New York

As you know, the state of New York amended its Regulation 187 last year. The effective date of the regulation's new requirements for annuities was August 1, 2019. The effective date for life insurance transactions is February 1, 2020.

The New York Department of Financial Services (NYDFS) proposed the amendments to Regulation 187 in order to clarify the duties and obligations of producers and insurers when making recommendations to consumers with respect to policies (life insurance policies and annuity contracts) delivered or issued for delivery in New York. ***The purpose of the regulation is to ensure that any transaction with respect to such policies is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer.***

Recommendation

Regulation 187 defines a recommendation, in pertinent part, as one or more statements or acts by a producer, or by an insurer where no producer is involved, to a consumer that:

- (1) reasonably may be interpreted by a consumer to be advice and that results in a consumer entering into or refraining from entering into a transaction in 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 consumers such as advertisements, marketing materials, general education information regarding insurance or other financial products and general administrative services to the consumer.

Transaction

Under Regulation 187, transactions are divided into two categories:

- (1) A **sales transaction** is the purchase or issuance of a policy, any replacement as defined under New York 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 premiums or deposits pursuant to the policy.
- (2) An **in-force transaction** is any modification or election of a contractual provision with respect to an in-force policy **that does not generate new sales compensation**.

For recommendations related to **sales transactions**, producers must act in the best interest of the consumer **and** must have a reasonable basis to believe that their recommendation is suitable for the customer. The regulation provides details on factors the producer needs to consider in order to formulate a reasonable belief that the recommendation is suitable for the consumer.

For recommendations related to **in-force transactions**, the producer must act in the best interest of the consumer.

Regulation 187 indicates that, with respect to a recommendation of an in-force transaction, the producer acts in the best interest of the consumer when:

- (1) The producer'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 consumer shall be considered in making 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.

Although Accordia Life and Annuity Company ("Accordia") is not authorized to engage in the business of insurance in the state of New York, we recognize that some producers are licensed in New York and may have written business through one of our legacy insurers – Aviva Life and Annuity Company of New York or Bankers Life of New York. Those policies have been novated to either Athene Annuity & Life Assurance Company of New York or First Allmerica Financial Life Insurance Company. No "new sales compensation," as described in Regulation 187, is paid to the producer in connection with such policies. **Therefore, we have concluded that Accordia does not currently engage in any activity that would be considered a sales transaction under Regulation 187.**

However, producers who wrote and/or currently service such policies must ensure that any **recommendations** with respect to **in-force transactions** related to such policies are made in the best interest of the consumer.

To the extent that you, a producer licensed in the state of New York, make any recommendations regarding such in-force policies as the servicing agent, you must keep the following in mind when you interact with New York consumers regarding any in-force transactions:

- Document your recommendation and the rationale for it.
- Document the basis for your belief that the recommendation is in the best interest of the consumer.
- Document that you provided all relevant information, both favorable and unfavorable, in order to adequately inform the consumer about the recommendation.
- Document your fulfillment of Regulation 187's training requirements

Regulation 187 also prohibits a producer from making a recommendation to a consumer to enter into an in-force transaction about which the producer has inadequate knowledge.

If you have questions about the policy for which you are providing any recommendation to a consumer to enter into an in-force transaction, please contact Accordia Customer Service at 877-462-8992.

Lastly, Regulation 187 requires all insurance companies to establish and maintain procedures designed to prevent financial exploitation and abuse. In the course of your interaction with consumers, including existing policy owners, you have an important role in both preventing and reporting the financial exploitation or abuse of existing policy owners. Please refer to pages 42-44 of the Agent Market Conduct & Compliance Guide in the Legal & Compliance section of globalatlanticlife.com for detailed information regarding financial exploitation and abuse.