

New York State Regulation 187 Financial Professional Training Requirements



eNotice, October 2019

Overview

At the end of 2018, the New York State Department of Financial Services (NY DFS) amended Regulation 187 (Reg 187) regarding sales of life and annuity products in New York. This amended regulation is already applicable to annuity sales (as of August 1, 2019), and it is set to take effect regarding life insurance products on **February 1, 2020**. Although Reg 187 applies only to New York transactions, it has drawn considerable attention as other states and agencies have indicated their intention to **develop similar rules**.

Central to Reg 187 was the imposition of a Best Interest standard on Financial Professionals selling New York contracts to clients. Earlier eNotices have offered overviews of Reg 187 and the Best Interest standard. This eNotice will focus on what many carriers have come to call the **“training”** requirement of the Regulation.

What in the Regulation triggers the “training” requirement?

Reg 187 states that “[a] producer shall not make a recommendation to a consumer to enter into a [sales/post-issue] transaction about which the producer has inadequate knowledge.” That section appears in several sections,¹ in nearly identical wording, that relate to both new sales and in-force transactions.

That general statement has been subject to different interpretations by producers and carriers. Many carriers are focusing on 2 key areas for training:

1. The Financial Professional’s understanding of the Best Interest standard;
2. Carrier specific product training, the reason being that a Financial Professional must understand the product that they are recommending to a client. This requirement in many ways parallels requirements in place based upon the NAIC Suitability in Annuity Regulation. Under Reg 187 it is a focus on the recommendation from which compensation is derived.

Best Interest training

Based upon the training requirements under Reg 187, many financial service course and continuing education (CE) providers have developed training around Reg 187. As this eNotice goes to publication, the NYDFS lists approximately a dozen courses that are available for continuing education and several other “industry standard” training and course providers offer Reg 187 Best Interest training but without applying for CE Certification from New York.

Many carriers and supervisory bodies have adopted different standards relative to taking these courses.

- Some broker dealers have specific course requirements for their representatives.
- Some others are taking an “open platform” approach, accepting courses from any industry standard course provider.

Key takeaway: Most carriers will want evidence of Best Interest training completion specific to Reg 187 from New York licensed Financial Professionals. Learn more about timing of the course training below.



Product training

It's also important to note that the regulation requires an explanation to the client, by the Financial Professional, as to why a particular product was recommended over other possible products; this is firmly in the scope of operating in a client's best interest. The regulation notes that such a recommendation must include a discussion of a product's benefits and features, both pros and cons.

By extension, many carriers are developing training on their current products, with a focus on their benefits and features (both pro and con). How this is being applied by carriers will vary, and it remains unclear what New York might find acceptable.

- Many carriers are preparing on-line courses specific to their product line;
- Others are considering product fact sheets with the ability to acknowledge a review of those product specific pieces.

Because Reg 187 applies to both new sales and post issue recommendations (that generate compensation) there has also been considerable discussion on how to handle historic or retired product training. For some carriers, this can involve hundreds of products.

- Some carriers have indicated an interest in developing courses or product fact cards.
- Other carriers are looking to steer Financial Professionals to product guides for these retired products.

Key takeaway: It's important to look at how a specific carrier handles both new and retired products before recommending a New York transaction.

Additional key items related to training

Because Reg 187 notes that a recommendation cannot be made without adequate knowledge, most carriers are requiring training to be completed before a recommendation is made. To set a finite date, most carriers will require training to be complete prior to taking the product application. This aligns with what is being done on the annuity side.

Some have argued that, with life insurance, the product might evolve over the underwriting process such that a final recommendation cannot be made until all underwriting offers are known. This issue was relayed to the NYDFS who address it in a Frequently Asked Questions publication.² Under that FAQ, New York more clearly enunciated that the "time of the recommendation" was statements that could reasonably be interpreted by a consumer to enter into (or refrain from entering into) a transaction. For many this would be at the time an application is taken. It is possible that as the underwriting on a life product evolves, a different recommendation might be made to a client (to enter into or refrain from entering into a transaction). However, based on the FAQ, it appears clear that the training must be completed before an initial application is taken.

It is important to note that if the product changes during the course of underwriting (for example, a change from a permanent to a term product) then additional product training may be necessary.

Key takeaway: It is important to work with your life insurance carrier's New Business and Licensing departments to determine their training requirements ahead of taking any client application.

For more information, please contact AXA Equitable Advanced Markets.

1 New York Regulation 187, §§224.4 (h) and 224.5(e).

2 New York Department of Financial Services, Life Bureau Filing Guidance Note – Frequently Asked Questions Regarding Section 224.4(f) of Regulation 187, September 6, 2019.

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