



NEW YORK FIRST AMENDMENT TO REGULATION 187 SUITABILITY AND BEST INTEREST IN LIFE INSURANCE AND ANNUITY TRANSACTIONS

FREQUENTLY ASKED QUESTIONS

What happened?

On August 1, 2018, the New York Department of Financial Services (NY DFS) adopted an amendment to their existing suitability regulation to include best interest, life insurance and in-force transactions (NY 187).

What changes were made?

At a high level, NY 187:

- takes into consideration that the recommended product shall be in a consumer's¹ best interest and can appropriately address a consumer's financial and insurance needs.
- does not reflect a bias against commissions (both commissions and fee-based compensation will be permitted).
- requires additional disclosures designed to match the consumer with the right product and inform the consumer about product features and benefits in addition to costs.
- requires producers to complete NY 187 best interest training by the effective date.

What's the compliance effective dates?

The new regulation becomes effective for any life insurance policy or annuity contract transactions made on or after the following dates:

- August 1, 2019, for annuity contracts
- February 1, 2020, for life insurance policies

Who does it apply to?

It applies to any licensed producer who materially participates in the making of a **recommendation** relative to new and existing annuity contracts or life insurance policies delivered or issued for delivery in New York regardless whether there was direct contact with the consumer.

What is a transaction?

A transaction is defined as either a sales transaction or an in-force transaction. Both require recommendations to be in the best interest of the consumer but only sales transactions require suitability review. Sales transactions include new business and in-force transactions where new sales compensation is paid. However, for in-force transactions where no producer recommendation is made (i.e., the consumer initiates the transaction), the producer does not have any best interest or suitability responsibilities under NY 187.

¹ NY 187 defines consumer as a prospective purchaser or existing owner of the insurance policy.

Nationwide New Business Requirements:

For all products in which Firms conduct suitability reviews, Nationwide will rely on Firms to supervise that producers are acting in the best interest of consumers as well as maintaining the required records.

If Nationwide is completing fixed product suitability, Nationwide will rely on producers to complete, date and sign the New York Suitability and Best Interest form (NY Suitability Form) and provide a copy to the consumer. Producers will need to provide upon request evidence that the consumer received the NY Suitability Form. Nationwide recommends that producers secure a signed receipt from the consumer evidencing receipt of the NY Suitability Form and other disclosures as required by NY 187.

Nationwide's New Business In-Good Order Requirements:

- NY Suitability Form to be dated and signed by the producer and consumer on or before the application date.
- All checkboxes must be checked indicating YES or NO. If NO is checked, Nationwide will reject the application unless an explanation is provided as an attachment and signed and dated by the producer and consumer.

Nationwide In-Force Requirements:

Where a recommendation is made, Nationwide considers the following to be an in-force sales transaction requiring a new suitability and best interest review.

- conversions,
- face amount increases,
- riders that pay new compensation, and
- additional premium received from a replaced policy

For products in which the selling Firm conducts suitability, Nationwide will rely on the selling Firms' supervisory procedures to supervise their representatives and to conduct these activities in accordance with FINRA rules for all securities and Nationwide's NY 187 company policy.

Nationwide's In-Force In-Good Order Requirements:

Nationwide will review post issue suitability for the sales transactions listed above for the same firms where new business fixed life suitability is currently conducted.

Where a Conversion or Policy Adjustment (with underwriting) Change Application (Change Application) is received, Nationwide will require a new NY Post Issue Suitability and Best Interest Questionnaire be completed in its entirety, signed and dated by the Producer and Consumer on or before the Change Application and be submitted with the Change Application to meet the good order requirements.

What is considered a recommendation?

A recommendation means one or more statements or acts by a producer to a consumer that:

- 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
- is intended by the producer to result in a consumer entering into or refraining from entering into a transaction.

What is not considered a recommendation?

A recommendation **does not include** general factual information provided to consumers, such as advertisements, marketing materials, general education information regarding insurance or other financial products, nor does it include general administrative services provided to consumers. It also does not include using an interactive tool that is intended to estimate insurance, future income or other financial needs, or compare different types of products, or refer the consumer to a producer, provided that the interactive tool is not used by a producer (or an insurer where no producer is involved) to satisfy any requirement imposed by NY 187.

How do producers stay within the parameters of the best interest requirement?

There are several important best interest considerations:

- 1) recommendations must be based on an evaluation of the relevant suitability information of the consumer;
- 2) recommendation must reflect 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;
- 3) only the interests of the consumer may be considered in making the recommendation;
- 4) receipt of compensation or other incentives does not influence the recommendation²
- 5) the producer has adequate knowledge of the product or product feature(s) being recommended;
- 6) the new or in-force sales transaction is **suitable**;
- 7) there is a reasonable basis to believe the consumer has been informed of the relevant product features of the life insurance policy and potential consequences of the transaction, both favorable and unfavorable;
- 8) the consumer has been informed how the producer is compensated for the sale and servicing of the life insurance policy;
- 9) there is a reasonable basis to believe that the consumer:
 - o will benefit from certain features of the product;
 - o the life insurance policy as a whole, the underlying subaccounts to which funds are allocated at the time of the sales transaction (if applicable), and riders and similar product enhancements, if any, are suitable for the particular consumer based on the consumer's suitability information; and
 - o in the case of a replacement, the replacement is suitable including taking into consideration the advantages and disadvantages of the new product compared to the existing product, and whether the consumer's existing product had been a replacement within the preceding 36 months.

Note: it is *extremely* important that the required replacement disclosure (Appendix A) information align closely with the producer's basis of the suitability recommendation which should be clearly documented in the producer's file and included in the NY Suitability Form. Additionally, these documents need to match any "reasonable summary format"³ used to support the producer's recommendation.

In sum, it is imperative that a producer include ALL relevant product information in order for the consumer to make an informed decision. If you run out of space on the Appendix A, attach additional sheets as needed. Some examples of "relevant product information" might include, but are not limited to the following:

² Product benefits, price, financial strength of the insurer and other factors that differentiate products and insurers can be considered.

³ Section 224.4(f)(1) requires at the time of recommendation that the producer disclose to consumer in "a reasonable summary format" all relevant suitability considerations and product information, both favorable and unfavorable, that provide the basis for any recommendations.

Permanent Life Insurance (UL, IUL, VUL, Whole): (continued)

- Surrender charges
- Fees, such as mortality and expense fees, policy fees and cost of insurance fees
- Charges for features or riders
- Secondary guarantee period
- Indexed interest crediting options/strategies
- Availability of cash value
- Tax implications
- Non-Guaranteed elements, including variability in premium, cash value, death benefit or fees
- Benefit eligibility requirements, restrictions and exclusions
- Certain Acceleration of Death Benefit Riders impact to death benefit
- Limitations on interest returns
- Guaranteed interest rate
- Investment components and market risk
- Contractual conversion provisions
- New contestability period and/or suicide exclusion

Term Life Insurance:

- Policy Fees
- Product restrictions or exclusions
- Charges for features or riders
- Contractual conversion provisions
- New contestability period and/or suicide exclusion

Did NY 187 define suitable?

Yes. It defines **suitable** to mean in furtherance of a consumer's current needs and objectives under the circumstances then prevailing, based upon the suitability information provided by the consumer and all products, services and transactions available to the producer.

Are there new training requirements?

Yes. All producers licensed in New York must complete NY 187 best interest training and be knowledgeable of the product recommended **before making a recommendation** and submitting any new business or in-force transaction to Nationwide.

Nationwide Support and In-Good Order Requirements:

- Nationwide has approved NY 187 training offered through RegEd, Kaplan, and LIMRA (see attachment).
- Nationwide has developed life product training which will be made available on RegEd.
- Nationwide will verify completion of NY 187 training courses and product training effective 2/1/2020 with any new life business application.
- Producers may complete the NY 187 training as part of their 15 required continuing education courses as outlined on the New York licensing website and are expected to maintain a certification of completion in their files and provide to Nationwide upon request.
- Producers may also contact Nationwide's Solution Center for assistance with any product information for post-issue recommendations.

Are there additional disclosure requirements?

Yes. There are enhanced disclosure requirements regarding suitability and product information, including product features, benefits and costs; and additional documentation requirements regarding the basis for any recommendation. Specifically,

at the time of recommendation:

- disclose to the consumer in a reasonable summary format all relevant suitability considerations and product information, both favorable and unfavorable, that provide the basis for any recommendations.

prior to recommendation, where applicable,

- a captive/affiliated producer disclosure disclosing the relationship with the insurer and the circumstances under which the producer will and will not limit product recommendations.

for in-force transactions:

- all relevant life insurance policy information requested by the consumer.

Reminder: existing disclosure is still required:⁴

On or prior to application,

- provide compensation summary as required under New York Reg. 194; and
- provide replacement disclosures as required under New York Reg. 60⁵.

Nationwide Support:

• **Product Profile Summary Disclosures**

Nationwide developed product profile summaries for our actively sold products to assist the producer in satisfying product information (both favorable and unfavorable) requirements.

• **New York Suitability and Best Interest Form**

A new Customer Suitability and Best Interest for Fixed Life Products form has been created which includes consumer and producer acknowledgements. Where Nationwide conducts the fixed product suitability review, this form will be required effective 2/1/2020 for new life business and in-force sales transactions and requires that all producer and consumer checkboxes be completed and signatures be obtained before the application will be considered in-good order for processing.

A special Reg 187 webpage will be available through nationwidefinancial.com on 2/1/2020 which will contain Product Profile Summaries, NY Suitability Form, Reg. 60 and Reg. 194 disclosures. This information will also be available by contacting our National Sales Desk at 1-800-321-6064.

To demonstrate compliance with NY 187, Nationwide recommends that producers secure a signed receipt from the consumer evidencing receipt of the NY Suitability Form and other disclosures as required by NY 187 as noted above. Nationwide will request evidence of delivery from the producer in the event of a complaint by the consumer, as part of routine regulatory inquiry, or as part of sampling transactions as part of our audit program.

⁴ NY 187 did not change the existing disclosure requirements set out in Regs. 194 and 60 disclosures, respectively, but referenced both Regs. requirements alongside the new best interest requirements.

⁵ Replacement disclosures required on or prior to application include the Definition of Replacement and the Important Notice.

Are there new documentation requirements?

Yes. At the time of recommendation, a producer must document the basis of the recommendation in a reasonable summary format. A producer must also document when

- no recommendation was made;
- a recommendation was made and was later found to have been prepared based on materially inaccurate material information provided by the consumer;
- a consumer refuses to provide relevant suitability information and the transaction is not recommended; or (Note: In this instance, Nationwide will reject the application).
- a consumer decides to enter into a sales transaction that is not based on a recommendation of the insurer or the producer.

A producer will also need to provide evidence that the consumer received a copy of the NY Suitability Form.

Nationwide recommends that producers require the consumer to sign a receipt evidencing that they have received a copy of the NY Suitability Form and other disclosures as required by NY 187.

Nationwide Support:

Nationwide developed a record-keeping checklist to assist producers with their record retention requirements.

The checklist will be available through the Reg 187 webpage at nationwidefinancial.com on 2/1/2020 or by contacting our National Sales Desk at 1-800-321-6064.

Does this apply to wholesaling?

It does not apply new requirements to wholesaling support as long as there is no material participation or compensation paid with the making of the recommendation, regardless whether there was any direct consumer contact, and the support is based on generic client information, education or marketing material.

What is new sales compensation?

Reg 187 defines new sales compensation to mean any replacement, conversion, or any modification or election of a contractual provision with respect to an in-force policy that generates new sales compensation. It also defines what is not new sales compensation which is compensation provided to a producer when, after the initial premium under a policy, the consumer pays further premiums pursuant to the policy.

Can I continue to use my professional designations?

Yes, but take note that NY 187 specifically prohibits a producer to use designations unless the producer is:

- properly licensed or certified to use the title or designation (such as financial planner); **and**
- actually provides security products or other non-insurance financial services.

What are the insurer's responsibilities?

NY 187 requires insurers⁶:

- to establish significant oversight for training and supervision of transactions and take necessary corrective action where appropriate.
- to establish and maintain procedures designed to prevent financial exploitation and abuse.
- to provide to an existing consumer all relevant life insurance policy information reasonably requested by the consumer.
- to provide all relevant product information in the event of a replacement that would be considered necessary for the evaluation of the replacement, regardless of whether there exists any specific section for the inclusion of the information within the disclosure statement set forth in Appendices 10A and 10B.
- to ensure its compensation and incentive programs, when taken as a whole, are designed to avoid *recommendations by producers that are not in the best interest of consumers*.

Insurers may contract with third parties (such as broker-dealer distributors) to establish and maintain a supervisory system (i.e., conduct suitability/best interest reviews).

Nationwide Support:

- Where Nationwide relies on the selling Firm's system of supervision and suitability review process, our Office of Compliance Staff will require completion of an annual Due Diligence Questionnaire along with a Suitability and Best Interest Certification. This information will be used to develop a risk-based approach to required oversight under NY 187. As a result, we will sample suitability and best interest paperwork and may request additional information to meet our obligations under NY 187.
- Nationwide is updating its Business Practice and Compliance Guide (Guide) to include best interest. This update will be available after the 2/1/2020 effective date. The Guide can be found on nationwidefinancial.com by following this link:
<https://nationwidefinancial.com/resources/support>

⁶ Not intended to be a comprehensive list of carrier responsibilities.

TRAINING ATTACHMENT

Reg Ed Course Titles:

- NY Reg 187; Suitability and Best Interest of Life Insurance and Annuity Transactions Course
Code: 484_NY, **or**
- Best Interest of Clients in Life Insurance and Annuity Transactions: NY Reg 187 – 1 Hour Course
Code: 485_NY

Kaplan Course Titles:

- New York Suitability and Best Interests in Life Insurance and Annuity Transactions or
- New York Suitability and Best Interests in Life Transactions

Nationwide will need to manually track completion of Reg 187 training taken through LIMRA.

LIMRA Course Title:

- Understanding Best Interest: NY Reg 187 for Advisors

If completing LIMRA training, please email the following information to License@nationwide.com to inform Nationwide that NY 187 training has been completed through LIMRA:

Subject Line: NY 187 LIMRA Training
Firm Name
Advisor Name
National Advisor Number (NPN)
Vendor Name (LIMRA)
Course Title
Date Course was completed

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