



# Reminder – New York Suitability and Best Interests in Life Insurance and Annuity Transactions Regulation

November 7, 2022

**Effective – 9/30/2020**

**States – New York**

The New York Department of Financial Services (DFS) has adopted a best interests standard for those licensed to sell life insurance and annuity products in New York. Amendments to 11 NYCRR 224 Insurance Regulation 187 (NY Reg 187) were implemented to ensure that all recommendations related to the sale of these products will be in the consumer’s best interests. The regulation became effective August 1, 2019, with respect to annuity transactions and February 1, 2020, with respect to life insurance policies.

Titled “Suitability and Best Interests in Life Insurance and Annuity Transactions”, the regulation clarifies the duties and obligations of insurers and producers, requiring them to establish a best interests standard of care and a program of supervision to ensure compliance by both the insurer and the producers recommending its products.

Recommendations under this regulation are broken into two categories, Sales Transactions, and In-force Transactions, which are generally defined below:

- Sales Transaction: The purchase or issuance of a policy, any replacement, conversion, or any modification or election of a contractual provision with respect to an in-force policy that generates new sales compensation.
- In-force Transaction: Any modification or election of a contractual provision with respect to an in-force policy that does not generate new/additional sales compensation.

As a result of NY Reg 187, the producer is required to know and understand any product that they make a recommendation for. Prior to making a recommendation, the producer should obtain a copy of their client’s policy or contract to review and understand the product’s features, benefits, restrictions, and charges.

The producer has a responsibility to ensure that their recommendation is in their client’s best interest, that it is suitable for them given their client’s current financial situation and to help the client understand how the transaction will affect the client’s in-force policy/contract and any underlying riders.

*continued –*

Genworth companies include:

**Genworth Life and Annuity Insurance Company**, Richmond, VA

**Genworth Life Insurance Company**, Richmond, VA

**Genworth Life Insurance Company of New York**, New York, NY

Only Genworth Life Insurance Company of New York is admitted in and conducts business in New York.

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Additionally, Genworth has:

- Provided a link to those NY approved providers that are offering a **one-time** training course designed to help producers understand their obligations under this regulation. (The link to the providers can be found below in the Training section of this bulletin.)
- Updated client facing forms for UL face increases and Annuitizations asking if the transaction was based on a producer recommendation.
- Created a Payment Recommendation Statement (628201NY) to accompany payments such as Add-Ons and UL dump-in payments if the payments were based on a producer recommendation.
- Created a Producer Attestation form (617801NY) which will be required in certain situations when a transaction was based on a producer recommendation.
  - This form confirms the producer:
    - has completed the necessary Product and Suitability and Best Interest training
    - believes the transaction to be suitable after review of all available suitability information
    - has documented the basis for the producer's recommendation
    - recommendation was in the best interest of the client
    - will provide any requested information related to the recommendation to Genworth, upon request
    - has informed the client how the producer will be compensated for the transaction

### Key Points

- When Genworth is notified by a client the payment/transaction was based on a recommendation, and the payment/transaction involves compensation, we will contact the producer by email, or their preferred contact method, to request the Producer Attestation form.
- Failure to send in the Producer Attestation form could result in any current Genworth appointments or Agreements being terminated.

## Appendix to Bulletin: New York Suitability and Best Interests Regulation

### TRAINING

Recommendations resulting in a Sales Transaction:

Producers will be required to have taken a **one-time** training course to help the producer understand their obligations under this regulation.

A list of approved Provider Organizations that have developed suitability/best interest courses and have received DFS approval to offer these courses for continuing education credit can be found on the NY DFS website at:

[https://www.dfs.ny.gov/apps\\_and\\_licensing/agents\\_and\\_brokers/Suitability/Best%20Interests%20Training](https://www.dfs.ny.gov/apps_and_licensing/agents_and_brokers/Suitability/Best%20Interests%20Training)

A producer completing best interest courses provided by one of the approved Provider Organizations will satisfy the best interest training requirement for Genworth Life Insurance Company of New York ("Genworth"). The completion of one of these courses can also earn continuing education credit towards the renewal of the producer's NY insurance license.

Sales and In-Force Transactions:

The regulation prohibits producers from making recommendations to a consumer "about which the producer has inadequate knowledge" and requires producers to inform the consumer of "the relevant features of the policy and potential consequences of the in-force transaction, both favorable and unfavorable."

As noted above, the producer is required to know and understand any product that they make a recommendation for. It is the producer's responsibility to obtain a copy of their client's policy or contract to review. The producer is responsible to understand the product, and any applicable riders' features, benefits, restrictions, charges, etc. and how their recommendation will affect (positively or negatively) the product and any applicable riders.

## INSURER OVERSIGHT AND PRODUCER OBLIGATIONS FOR SALES TRANSACTIONS

Under NY Reg 187, Genworth has obligations for Sales Transactions. Given that Genworth is not selling new products in NY that pay commission, these additional obligations will be:

- For transactions made in in-force products,
- At the recommendation of a producer,
- That result in **additional** commission being paid – for example:
  - Life insurance example:
    - a. Policy owner has a planned premium of \$1,000/year and makes the \$1,000 payment each year
      - While commission is paid, no additional commission is generated over and above what would be paid on the annual planned premium payment and this would not be subject to the provisions in this regulation
    - b. Policy owner has a planned premium of \$1,000, and based on the recommendation of their producer, makes a premium of \$10,000 that year
      - The commission paid would be greater in scenario b, based on the recommendation, and thus, would be a Sales Transaction and fall under the provisions of this regulation
  - Flexible premium annuity example:
    - a. Contract owner purchased the annuity in 2010, and the contract owner decided on their own to contribute an additional \$1,000 every year
      - While commission is paid on each \$1,000 contribution, the contributions were not made based on a recommendation and would not be subject to the provisions of this regulation
    - b. Contract owner purchased the annuity in 2010. In 2020 the contract owner, based on the recommendation of their producer decided to contribute an additional \$10,000 to their annuity.
      - The commission paid on the \$10,000 contribution would be based on the recommendation of their producer and thus would be a Sales Transaction and fall under the provisions of this regulation

Genworth has updated numerous forms that will require the policy/contract owner ("owner") completing the form to acknowledge whether the transaction being requested was recommended by their producer.

Additionally, there are some transactions that will come into Genworth that are not driven by a form. For these transactions, Genworth has created a form to facilitate reaching out to the owner to determine if the transaction was made based on the recommendation by their producer.

If it is determined that the transaction was a recommendation, the recommending producer **WILL BE REQUIRED TO COMPLETE AND RETURN A "PRODUCER ATTESTATION FORM"**. This form is required under the regulation for insurer oversight to confirm that the producer:

- Has completed the necessary Product and Suitability and Best Interest training
- Believes the transaction to be suitable after review of all available suitability information
- Has documented the basis for the producer's recommendation
- The recommendation was in the best interest of the client
- Has informed the client how the producer will be compensated for the transaction
- Will provide any requested information related to the recommendation to Genworth, upon request

In addition to the required Producer Attestation form, Genworth is required to audit certain Sales Transactions. For the transactions that will be audited, Genworth will require the producer to also complete the Producer Recommendation Audit form. The producer will need to answer each question based on the specific recommendation that they made to the product. The producer will then need to provide a narrative explanation for each question that was answered "yes".

The producer is encouraged to submit any additional documentation (client notes, suitability documentation, etc.) that they feel would help our understanding of the transaction in our review. If we receive a form that is incomplete based on the transaction, or we determine the information is insufficient to meet our requirements under the regulation, we will request additional information from the producer.

**Failure to provide Genworth with either the completed Producer Attestation form or the Producer Recommendation Audit form could result in any current Genworth appointments or Agreements being terminated.**