

Bulletin 22-03

To: Annuity Insurers, Producers, and CE Course Providers
From: Larry Deiter, Director
Date: June 30, 2022
Re: Annuity Best Interest Standards

This Bulletin addresses SB 148 which passed in the 2022 Legislative Session. SB 148 establishes a new set of sales standards for the annuity industry in South Dakota, referred to as “Annuity Best Interest”.¹ These standards are effective January 1, 2023.

ANNUITY BEST INTEREST STANDARDS

Annuity Best Interest places duties on insurance producers and insurers for annuity recommendations to consumers.² Annuity Best Interest applies to all producers selling annuities in South Dakota. These duties are paraphrased here:³

- Care
 - Producers must know their consumer’s needs, understand the annuity options they are recommending, obtain consumer profile information, and apply careful consideration if replacing or exchanging annuities.
 - These standards do not create a fiduciary relationship or require producers to look beyond the products they are authorized to sell.
- Disclosure
 - Producers must have a reasonable basis that the consumer is informed about annuity purchases and complete forms disclosing important information to the consumer.
 - Producers must disclose the compensation for the product.
- Conflict of Interest
 - Producers must identify and avoid or reasonably manage and disclose material conflicts of interest.
- Documentation
 - Producers must document compliance with the new standards. Most of Annuity Best Interest is driven by forms which will be available on the Division’s website or from insurance companies.

¹ <https://mylrc.sdlegislature.gov/api/Documents/234767.pdf>

² A “recommendation” is defined as “advice... intended to result or results in a purchase, replacement, or exchange of an annuity in accordance with that advice” as provided in SB 148. If a producer presents multiple annuities to a consumer for purchase, each of those annuities is considered a “recommendation” and must follow the Annuity Best Interest standards.

³ For a complete understanding, please review SB 148. “Producers” include insurers for direct sales.

While these new standards are placed upon producers, overall regulatory compliance oversight regarding annuity sales remains with the insurance companies. Companies must establish and maintain a system to supervise recommendations to ensure consumer needs and objectives are effectively addressed.

Insurance producers who offer annuity recommendations made in compliance with comparable standards as a registered broker-dealer, investment advisor, or ERISA plan fiduciary are deemed to satisfy the Annuity Best Interest standards.

ANNUITY BEST INTEREST TRAINING FOR PRODUCERS

To assist in transition to the new standards, SB 148 requires Annuity Best Interest standards continuing education training as follows:

- All existing producers qualified to sell annuities and who have completed the previous Annuity Suitability training requirement prior to January 1, 2023, may complete a one-credit refresher course on Annuity Best Interest between January 1, 2023, and July 1, 2023, or can also complete the new Annuity Best Interest four-credit course to be in good order.
- New producers on or after January 1, 2023, must take a four-credit course to become qualified. The course will cover Annuity Best Interest.

Nonresident producers are expected to be in compliance with the training standards regarding Annuity Best Interest in South Dakota. Completion of these requirements in another state whose training is substantially similar in content to the South Dakota regulation will be deemed to be compliant with South Dakota. Insurance companies are responsible for nonresident producer training compliance.

Course providers may submit Annuity Best Interest courses starting July 1, 2022, for Division review. Four-credit Annuity Best Interest courses will be available to producers starting October 1, 2022.⁴ One-hour refresher courses will be available to producers starting January 1, 2023. Any courses covering previous annuity sales standards will become inactive starting October 1, 2022.

ADDITIONAL INFORMATION

The Division will post forms and FAQs on its website to provide guidance as necessary. This Bulletin supersedes and replaces Bulletin 08-05.

⁴ Producers who become licensed in 2022 and who take an Annuity Best Interest four-hour course after October 1, 2022 will be required to take a one-hour refresher course prior to July 1, 2023.