



# WRNewswire

An AALU Washington Report

Thursday, 21 June 2018

WRN 18.06.21



On April 27, the New York Department of Financial Services (DFS) re-proposed its best interest standard for life insurance and annuity products. The deadline for comments was June 15, and AALU submitted our second formal comment ([link](#)). Unfortunately, the revised proposal fails to address a number of critical issues identified in the initial comment period, such as an application of the proposal to some in-force policies. A summary of key issues and concerns with the revised proposal is below.

Despite significant positive engagement by the industry overall with DFS, including several

meetings and conversations with Department officials, signals from the ground in New York indicate that DFS may not make more than a few substantive changes to the text of the revised proposal. DFS is also unlikely to issue another revised draft for any additional comments. The timing for the issuance of any final rule is uncertain. While it could come as soon as early July, it could also slide to late Summer or early Fall. The revised proposal has an effective date of March 1, 2019 for annuity products and September 1, 2019 for life insurance policies. Indications are that DFS is also not likely to extend those dates in a final rule.

We will be working closely with our industry partners to assess any final rule and next steps. We will provide our members in NY with the information and tools they need as the implementation of any final rule moves forward. We will be hosting a webinar on the NY proposal in the near future.

We also expect to see more activity on the State level going forward. With the DOL fiduciary rule vacated by the 5<sup>th</sup> Circuit Court, more States have indicated an interest in developing their own standard of conduct rules. In May, California and Oregon joined New York in asking the Court to reconsider their decision on the fiduciary rule, and some industry observers are concerned California could move forward with its own standard in 2019, among other States. We will continue to update AALU members as developments warrant.

## **NY Best Interest Newswire**

### **Summary of Key Issues - New York State Best Interest Proposal**

The revised proposal contains a number of impractical definitions and concepts, making it unclear how the best interest standard will work in practice with regard to recommendations of life insurance policies. But as written, the proposal clearly represents a fundamental change in the way life insurance recommendations are made in New York. The summary points below are explained in more detail in our comment letter ([link](#)),

where we discuss the harm to NY consumers that is likely to result from the provisions as written.

#### Application of Best Interest Standard to Life Insurance and In-Force Policies

- The proposal applies the current suitability factors for annuity recommendations in New York to recommendations of life insurance policies. Producers would be required to gather and document 13 points of information currently applicable to annuities for even basic life insurance policies before making a recommendation.
- The proposal applies to in-force life insurance policies where there is a “modification or election of a contractual provision” that does not generate new sales compensation. This means consumers exercising contractual rights like an allowable loan feature could easily fall under the scope of the best interest standard, adding costs and hurdles for consumers.

#### Corporate-Owned Life Insurance

- The proposal contains an exclusion for life insurance and annuities purchased by employers for non-qualified deferred compensation arrangements, as well as for corporate and bank-owned life insurance. However, it does not currently apply to life insurance policies used by small businesses and partnerships, such as key-man policies.

#### Changes to Compensation

- The original proposal clearly stated there was no intent to prohibit traditional forms of insurance compensation that had been previously approved by the Department. However, the revised proposal lacks this clarity. We are very concerned that the totality of the changes to definitions and producer requirements in the revised proposal could be read to prohibit common compensation methods previously approved by DFS, including compensation that varies from one product to another.

### Application of Best Interest Standard to those with No Direct Consumer Contact

- As written, the proposal could be interpreted to mean that wholesalers and back office support staff that are licensed as producers also share responsibility for ensuring that the suitability review and best interest requirements have been met.

### Restrictions on Using the Terms Financial Planner and Investment Manager

- The proposal prohibits producers with only an insurance license from calling themselves financial planners or investment managers without certain designations or certifications.

## **Stay Tuned for Update on DOL Fiduciary Rule**

The 5<sup>th</sup> Circuit Court vacated the DOL fiduciary rule in March, returning us to the previous ERISA law. However, the old rule is likely to be interpreted differently, and the marketplace has changed since implementation began in April 2016. We will be providing an update on the current situation shortly, and will continue to advise our members as rules and regulations develop in this space.

### **Questions?**

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