

Regulatory Impact Statement for the Proposed First Amendment to 11 NYCRR 224 (Insurance Regulation 187).

1. Statutory authority: The authority of the Superintendent of Financial Services (“Superintendent”) to promulgate the First Amendment to Insurance Regulation 187 (11 NYCRR 224) derives from Financial Services Law (“FSL”) sections 202 and 302, and Insurance Law (“IL”) sections 301, 308, 309, 2103, 2104, 2110, 2123, 2208, 3209, 4224, 4226, 4525, and Article 24.

FSL section 202 establishes the office of the Superintendent.

FSL section 302 and IL section 301, in pertinent part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the IL, FSL, or any other law, and to prescribe regulations interpreting the IL.

IL section 308 authorizes the Superintendent to address to any authorized insurer or its officers any inquiry relating to its transactions or condition or any matter connected therewith.

IL section 309 authorizes the Superintendent to make examinations into the affairs of entities doing or authorized to do business in this state as often as the Superintendent deems it expedient.

IL sections 2103 and 2104 set forth licensing requirements for insurance agents and brokers.

IL section 2110 authorizes the Superintendent to revoke or suspend the license of an insurance producer if, after notice and hearing, the producer has demonstrated untrustworthiness or incompetence, violated the IL or regulations promulgated thereunder, or engaged in certain other specified behavior.

IL section 2123, among other things, prohibits an insurance agent, insurance broker, or representative of an insurer from making misrepresentations or misleading statements about a life insurance policy or annuity contract or an incomplete comparison for the purpose of inducing, or tending to induce, a person to lapse, forfeit or surrender any insurance policy.

IL section 2208 provides that an officer or employee of an authorized insurer that has been certified pursuant to IL Article 22 is subject to IL section 2123.

IL Article 24 prohibits unfair methods of competition and unfair or deceptive acts or practices.

IL section 3209 mandates disclosure requirements in the sale of life insurance, annuities and funding agreements and authorizes the Superintendent to promulgate regulations to implement this section.

IL section 4224 proscribes unfair discrimination and other prohibited practices by insurers.

IL section 4525 applies IL sections 2110(a), (b), (d)-(f), 2123, 3209 and 4226, and IL Articles 2, 3, and 24, to authorized fraternal benefit societies.

IL section 4226 prohibits an authorized life insurer from making misrepresentations, misleading statements about a life insurance policy or annuity contract or an incomplete comparison for the purpose of inducing, or tending to induce, a person to lapse, forfeit or surrender any insurance policy.

2. Legislative objectives: IL sections 2103, 2104, 2110, 2123, 2208 and Article 24 establish standards of conduct for insurance producers, including that they act in a competent and trustworthy manner. IL section 4226 establishes standards of conduct for life insurance companies and fraternal benefit societies (collectively, “insurers”), and Article 24 permits the Superintendent to regulate trade practices in the business of insurance to prevent acts or practices that are unfair or deceptive.

This amendment accords with the public policy objectives that the Legislature sought to advance in IL 2103, 2104, 2110, 2123, 2208 and Article 24 by clarifying the duties and obligations of insurance producers and insurers to ensure that a transaction is in the consumer’s best interest and appropriately addresses the consumer’s insurance needs and financial objectives at the time of the transaction.

3. Needs and Benefits. 11 NYCRR 224 (Insurance Regulation 187) was first promulgated in 2013 and was based on the National Association of Insurance Commissioners’ Suitability in Annuity Transactions Model Regulation (“NAIC Model”). Since that time, the Department of Financial Services (“Department”) has monitored the financial market and the application of the regulation’s standards and procedures to annuity transactions. The Department has identified certain areas where additional protections are needed with respect to

recommendations to consumers. The primary objective of this amendment is to address deficiencies in the regulation.

Since 2013, the purchase of annuities and life insurance has become a more complex financial transaction, resulting in a greater need for consumers to rely on professional advice, to seek assistance in understanding available life insurance and related products, and in making purchase decisions. The U.S. Department of Labor (“DOL”) has issued 29 C.F.R. 2510 (the “DOL Rule”), which, in part, imposes a best interest standard of care so that all financial professionals who provide retirement planning and investment advice must act in the best interests of their clients.

Insurance Regulation 187 currently requires an insurance producer, or the insurer where no producer is involved, when recommending an annuity transaction, to have reasonable grounds for believing that the recommendation is suitable for the consumer based on information provided by the consumer. Currently, Insurance Regulation 187 only addresses annuity transactions and does not define a suitable recommendation.

This amendment defines “suitability” and specifies a best interest standard of care that applies to all annuity and life insurance transactions in New York State, regardless of the product type or source of funds, to ensure fair treatment of consumers purchasing both retirement and non-retirement annuity and life insurance products. A uniform standard of care across all types of financial transactions, including both annuity and life insurance transactions, provides consistent consumer protection and a consistent regulatory framework to ensure fair treatment regardless of product choice. The Department finds no acceptable justification for applying different standards of conduct based solely on the source of funds. Accordingly, the amendment clarifies the duties and obligations of insurance producers, or insurers where no producer is involved, by ensuring that recently proposed national standards for certain annuity contracts and life insurance transactions apply to all transactions in New York State regardless of the source of funds.

In addition, this amendment adds consumer protections by requiring an insurance producer to have a reasonable basis to believe that the consumer has the financial ability to enter into a transaction and prohibits the producer from implying that any recommendation is part of an investment plan unless the producer has a specific certification or professional designation in that area. The amendment also adds certain consumer disclosure requirements designed to increase awareness and prevent financial abuse.

4. Costs: Insurers and insurance producers subject to this amendment likely will incur costs because of this amendment. The amendment expands the regulation's current training requirement so that an insurer is responsible for ensuring that every insurance producer recommending the insurer's life insurance contracts is adequately trained to make the recommendation. It also requires an insurer to establish and maintain procedures designed to prevent financial exploitation and abuse, and requires an insurer to provide a consumer with all relevant policy information to evaluate a transaction. The amendment further requires an insurer to provide a producer with all relevant replacement information necessary to evaluate suitability.

This amendment now requires a producer or an insurer to also disclose to a consumer all relevant suitability considerations and product information that provide the basis for a recommendation to enter into a life insurance transaction, and to document: any life insurance recommendation subject to 11 NYCRR § 224.4(a) and (b); a consumer's refusal to provide suitability information, if any; and that a life insurance transaction is not recommended if a consumer decides to enter into a life insurance transaction that is not based on the producer's or insurer's recommendation.

However, the standards and procedures required by this amendment for recommendations to consumers with respect to life insurance are substantially similar to the standards and procedures already in place for annuities. Accordingly, any costs incurred by producers and insurers subject to this amendment that currently sell annuities should be minimal because they will already have in place for annuities the required supervisory system and training procedures to comply with this amendment. Also, producers already have procedures in place to

document their recommendations with respect to annuities. While the costs to implement this amendment may vary by size and business of the insurer and producer, and thus difficult to estimate, the Department does not anticipate the costs to be significant.

Indeed, the Department anticipates that future costs may decrease over time by establishing one uniform best interest standard that will apply to all recommendations made for all product transactions.

The costs associated with establishing procedures designed to prevent financial exploitation and abuse are expected to be minimal, because, as the Department understands it, many insurers have already developed procedures to prevent financial exploitation and abuse.

This amendment does not impose additional costs on the Department or state or local governments.

5. Local government mandates: The amendment imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: In addition to documenting recommendations for annuities, the amendment generally requires an insurance producer or insurer to document any life insurance recommendation. It also requires an insurer to provide a consumer with all relevant policy information with respect to evaluating a transaction and requires an insurer to provide a producer with all relevant replacement information necessary for the evaluation of suitability.

7. Duplication: The rule does not duplicate, overlap, or conflict with other state requirements. The rule has the potential to partially duplicate the DOL Rule in that both rules impose a best interest standard of care and a recordkeeping requirement. However, the area of potential duplication is very narrow since the DOL Rule only imposes a best interest standard of care and recordkeeping requirement where the insurance producer is receiving a commission from the annuity transaction; the annuity's funding comes from a tax qualified source; and the annuity is either a variable annuity or an equity indexed annuity. This amendment, however, applies to all life insurance and annuity transactions in New York State, regardless of the source of funds or the manner of

compensation. Since the best interest standard of care and the recordkeeping requirement in the regulation are consistent with the DOL rule, there is no conflict.

8. Alternatives: The Department considered not implementing the amendment, but the Department has rejected this alternative because doing nothing would be disadvantageous to consumers. Another alternative would be to wait for the NAIC's suitability working group to update the NAIC Model, but the Department rejected this alternative because of the urgency to achieve uniformity of a best interest standard of care for all transactions in New York State. Also, with respect to financial exploitation and abuse, the Department considered a more robust, prescriptive set of reporting rules but determined it would be preferable to allow insurers to establish and maintain their own procedures provided that the procedures are designed to prevent exploitation and abuse.

9. Federal standards: The DOL Rule includes standards that apply to certain annuities that contain qualified funds. The standards in this amendment utilize the standards imposed by the DOL Rule in imposing a best interest standard of care; however, since the DOL rule applies only in certain circumstances where the producer receives commission from the annuity transaction; the annuity's funding comes from a tax qualified source; and the annuity is either a variable annuity or an equity indexed annuity, the amendment extends those requirements to all life insurance and annuity transactions in New York State, regardless of the source of funds or the manner of compensation, to achieve a uniform regulatory scheme for all product types in New York State.

10. Compliance Schedule: The amendment will take effect 90 days after publication of the Notice of Adoption in the State Register, which should provide sufficient time for insurance producers and insurers that are subject to the amendment to comply with it.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Proposed First Amendment to 11 NYCRR 224 (Insurance Regulation 187).

1. Effect of the amendment: This amendment requires insurers to establish standards and procedures for recommendations to consumers with respect to life insurance and annuity contracts so that any transaction with respect to those contracts is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer at the time of the transaction. The amendment clarifies statutory duties and obligations of insurance producers and insurers to establish uniform standards of conduct regardless of the product type or the source of assets funding the products.

Authorized life insurance companies and fraternal benefit societies (collectively, “insurers”), and insurance producers are subject to this amendment. The Department of Financial Services (“Department”) finds that the rule, as applicable to insurers, will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that none of the insurers authorized to do a life insurance business in New York State come within the definition of “small business” as defined in State Administrative Procedure Act (“SAPA”) § 102(8). The Department reviewed filed reports on examination and annual statements of such authorized insurers and concluded that none of these entities come within the definition of “small business” because there are none that are both independently owned and have fewer than one hundred employees. In contrast to insurers, the Department believes that many producers are likely to be small businesses within the definition of “small business” set forth in SAPA § 102(8), because many are independently owned and operated, and employ fewer than 100 employees. Approximately 143,000 insurance agents and 15,000 insurance brokers have the life insurance line of authority. It is not known, however, how many of them are small businesses.

This amendment should not impose any adverse compliance requirements or adverse impacts on local governments because the amendment affects entities authorized to sell life insurance and annuity contracts, none of which are local governments.

2. Compliance requirements: Producers that are small businesses subject to the amendment must make suitable recommendations for life insurance and annuity transactions that are based on relevant suitability information obtained from, and are in the best interests of, consumers. While Insurance Regulation 187 currently applies only to annuity contracts, this amendment now requires a producer or an insurer to also disclose to a consumer all relevant suitability considerations and product information that provide the basis for a recommendation to enter into a life insurance transaction, and to document: any life insurance recommendation subject to 11 NYCRR § 224.4(a) and (b); a consumer's refusal to provide suitability information, if any; and that a life insurance transaction is not recommended if a consumer decides to enter into a life insurance transaction that is not based on the producer's or insurer's recommendation.

3. Professional services: No professional service is required to meet the requirements of this amendment.

4. Compliance costs: The standards and procedures required by this amendment for recommendations to consumers with respect to life insurance are substantially similar to the standards and procedures already in place for annuities. Accordingly, any costs incurred by producers that are small businesses subject to this amendment and that currently sell annuities should be minimal, as the producers will already have in place the standards and procedures necessary to comply with this amendment. Also, producers already have procedures in place to document their recommendations with respect to annuities. While the costs to implement this amendment may vary by size and business of the producer, and thus are difficult to estimate, the Department does not anticipate the costs to be significant.



Indeed, the Department anticipates that future costs may decrease over time by establishing one uniform best interest standard that will apply to all recommendations made for all product transactions.

There are no costs to other government agencies or local governments.

5. Economic and technological feasibility: Although there may be minimal additional costs associated with complying with the amendment, compliance should be economically feasible for producers that are small businesses.

6. Minimizing adverse impact: There is little or no adverse economic impact on producers that are small businesses. The compliance, documentation and recordkeeping requirements of this amendment should have little impact on producers that are small businesses. Differing compliance, reporting requirements or timetables for producers that are small businesses are not feasible since the impact on regulated parties is already minimal and the standards established would be the same.

7. Small business and local government participation: Affected producers that are small businesses will have an opportunity to participate in the rulemaking process once the proposed amendment is published in the State Register and posted on the Department's website.

Rural Area Flexibility Analysis for the Proposed First Amendment to 11 NYCRR 224 (Insurance Regulation 187).

1. Types and estimated number of rural areas: Life insurance companies, fraternal benefit societies, and insurance producers covered by this amendment do business in every county in this state, including rural areas as defined in the State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements, and professional services: 11 NYCRR 224 (Insurance Regulation 187) currently contains reporting requirements for annuity transactions, and the amendment expands those requirements to apply to life insurance too. The amendment requires a life insurance company or a fraternal benefit society (collectively, “insurer”), or an insurance producer, including those located in a rural area, to disclose to the consumer all relevant suitability considerations and product information that provide the basis for any life insurance recommendation and to document: any recommendation subject to 11 NYCRR § 224.4(a) and (b); the consumer’s refusal to provide suitability information, if any; and that a life insurance transaction is not recommended if a consumer decides to enter into a life insurance transaction that is not based on the producer’s or insurer’s recommendation. Because insurers already adhere to these requirements for annuity transactions, they should be able to extend their current supervisory systems and training procedures to apply to life insurance, and should not need to establish new procedures or systems to comply with this amendment.

This amendment also requires an insurer, including an insurer located in a rural area, to: establish procedures designed to prevent financial exploitation and abuse; provide to the consumer all relevant policy information used to evaluate a transaction; and provide to the producer all policy information used to evaluate the suitability of a proposed replacement.

3. Costs: Insurers, including insurers located in a rural area, likely will incur costs because of this amendment. The amendment expands the training requirement so that an insurer is responsible for ensuring

that every insurance producer recommending the insurer's life insurance contracts is adequately trained to make the recommendation. It also requires an insurer to establish and maintain procedures designed to prevent financial exploitation and abuse, and requires an insurer to provide a consumer with all relevant policy information to evaluate a transaction. The amendment further requires an insurer to provide a producer with all relevant replacement information necessary to evaluate suitability.

This amendment now requires a producer or an insurer to also disclose to a consumer all relevant suitability considerations and product information that provide the basis for a recommendation to enter into a life insurance transaction, and to document: any life insurance recommendation subject to 11 NYCRR § 224.4(a) and (b); a consumer's refusal to provide suitability information, if any; and that a life insurance transaction is not recommended if a consumer decides to enter into a life insurance transaction that is not based on the producer's or insurer's recommendation.

However, the standards and procedures required by this amendment for recommendations to consumers with respect to life insurance are substantially similar to the standards and procedures already in place for annuities. Accordingly, any costs incurred by producers and insurers, including those located in a rural area, that currently sell annuities should be minimal, as the producers and insurers will already have in place for annuities the required supervisory system and training procedures to comply with this amendment. Also, producers already have procedures in place to document their recommendations with respect to annuities. While the costs to implement this amendment may vary by size and business of the insurer and producer, and thus difficult to estimate, the Department of Financial Services ("Department") does not anticipate the costs to be significant.

Indeed, the Department anticipates that future costs may decrease over time by establishing one uniform best interest standard that will apply to all recommendations made for all product transactions.

The costs associated with establishing procedures designed to prevent financial exploitation and abuse are expected to be minimal, because, as the Department understands it, many insurers have already developed procedures to prevent financial exploitation and abuse.

This amendment does not impose additional costs on the Department or state or local governments.

4. Minimizing adverse impact: This amendment applies to insurers and producers that do business in New York State, including those located in a rural area. The standards and procedures required by this amendment clarify the duties and obligations of producers under the standards of conduct established by Insurance Law §§ 2103, 2110, 2123 and 2208. The standards and procedures required by this amendment also clarify the duties and obligations of insurers under the standards of conduct established by Insurance Law § 4226 and Article 24. Due to standards of conduct already established by the Insurance Law, many insurers and producers, including those located in rural areas, already comply with the standards established in this amendment. This amendment applies uniformly to insurers and producers that do business in both rural and non-rural areas of New York State. The Department finds that this amendment does not impose any additional burden on insurers or producers located in rural areas.

5. Rural area participation: Insurers and producers in rural areas will have an opportunity to participate in the rulemaking process once the proposed amendment is published in the State Register and posted on the Department's website.

Statement Setting Forth the Basis for the Finding that the Proposed First Amendment to 11 NYCRR 224 (Insurance Regulation 187) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities.

The Department of Financial Services finds that this rule will not adversely impact jobs or employment opportunities in New York. This amendment establishes suitability standards for life insurance policies and clarifies established suitability standards for annuity contracts and life insurance policies so that any transaction is in the best interest of the consumer. This amendment should not impact jobs or employment opportunities for insurers or producers.