Revised Regulatory Impact Statement for the 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.

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.

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. Products often offer a wider range of benefits and the benefits are more complex, making disclosure alone inadequate and additional standards for producer knowledge, supervision and standards of care necessary. For instance, "indexed" annuity and life insurance products are offered to a far wider range of consumers and according to most insurance industry surveys have seen market share grow rapidly. These products are inherently more complex than other products and are designed to provide interest crediting that tracks the movement of an external market index. More recently, many insurers have sought to offer these types of products with options that track proprietary and volatility controlled indices that are managed by outside financial institutions and have started to offer new types of income and withdrawal options. A newer variation of indexed products often known as "buffer" or "structured" annuities have also proliferated; marketing and sales practices of these products caused the Department to initiate an investigation in November of 2017, which remains ongoing. Moreover, in response to widespread issues related to improper marketing and illustration of indexed universal life insurance products, the Department participated in national regulatory discussions which culminated in the issuance by the National Association of Insurance Commissioners ("NAIC") of Actuarial Guideline 49 that seeks to make it harder for producers and insurers to set unrealistic expectations for consumers in order to increase sales of the product; subsequent to the issuance of Actuarial Guideline 49, insurers have further sought to increase the complexity of their indexed universal life products by including a number of "accumulation bonuses" and "multiplier" options that add additional complexity to the products. The Department has also seen a marked increase in insurers seeking to offer both fee-based and commission-based versions of many of their products simultaneously through brokers. In response to questioning by the Department, some insurers and producers admitted that they wanted access to both fee-based and commission-based versions of the same product for the purpose of minimizing their compliance burdens under 29 C.F.R. 2510 (the "DOL Rule") recently issued by the U.S. Department of Labor ("DOL"), i.e., they would specifically recommend a certain version of a product to a given consumer based on their own needs and preferences, not based on what is best for the consumer. The Department has also found that many new life insurance and annuity products filed for sale also seek to provide "hybrid" benefits, meaning they are designed to cover multiple insurance risks such as for life insurance or annuities with long-term care benefits. While many of these options offer additional value and choice to the consumer, they increase the reliance by consumers on recommendations provided by producers, recommendations that have the potential to be influenced by the conflicts of interest of the producer.

A number of Department investigations and examinations since 2013 have demonstrated the need for a best interest standard of care for life insurance and annuity sales. In 2015, the Department launched an investigation of deferred-to-immediate annuity replacements, with compensation tied to the replacement, whereby consumers with in-force deferred and variable annuity contracts with robust income options were induced to replace those contracts with immediate annuity contracts providing lower benefits. On December 8, 2016, the Department issued Insurance Circular Letter No. 7, which reminds producers and insurers of their disclosure requirements and other suitability determination responsibilities related to these types of replacements. Multiple insurers have also been examined for compliance with 11 NYCRR 51 (Insurance Regulation 60), which requires extensive disclosure related to proposed replacements. In addition to violations of the disclosure requirements in Regulation 60, the Department also found many instances where sales and replacements that were clearly not in the best interest of consumers were justified on the basis of the existing suitability standard for annuities, or not justified at all due to a lack of an existing standard for life insurance.

The Department believes, in light of all of the facts and its expertise, that a regulation is needed to prevent insurers and producers from recommending a transaction that is properly disclosed and determined to be suitable for a consumer, but that is otherwise not in the best interest of that consumer and is designed to maximize compensation to the sellers.

The DOL Rule, which expands the definition of investment advice under the federal Employee Retirement Income Security Act, applies to certain annuity and life insurance sales and requires financial advisors to adhere to enhanced standards of conduct. The DOL Rule has the effect of making the sale of many insurance products - namely those involving qualified money - subject to a fiduciary standard. As an alternative, a producer and an eligible financial institution could receive an exemption from this standard under the Best Interest Contract Exemption (PTE 2016-01, granted on April 8, 2016 at 81 FR 21002, as corrected at 81 FR 44773 on July 11, 2016) within 26 C.F.R. 2550 or other exemptions, where the producer would still be required to act in the best interest of the consumer and adhere to other conduct standards. Although delays to the rule issued by the Trump administration and conflicting court decisions have resulted in uncertainty about the implementation of the DOL Rule, the Department believes that the best interest standard is an important consumer protection and intends to pursue this protection for New York consumers regardless of what happens with the DOL Rule. The Securities and Exchange Commission ("SEC") has also stated that it intends to issue or amend its own regulations providing for standards of conduct for broker-dealers and associated persons of a broker-dealer making a recommendation of any securities transactions or investment strategy involving securities to a retail customer. According to the DOL's Regulatory Impact Analysis, the DOL found that conflicted advice is causing harm to consumers and that disclosure alone would not remedy the harm. This is consistent with the Department's own observations in New York. Like the DOL, the Department believes that regulatory action is necessary. A shortcoming of federal regulations, either by the DOL or the SEC, is that those entities' limited jurisdiction would create a two-tiered standard of conduct for different types of annuities and life insurance products (i.e., qualified versus nonqualified) which would be harmful and confusing for consumers and producers alike. The proposed amendment will impose a consistent standard of care across life insurance and annuity product lines and protect consumers from conflicted recommendations. The Department has also had discussions with its regulated individuals and entities as well as with consumer groups.

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. The Department finds no acceptable justification for applying different standards of conduct based solely on the source of funds. A consistent standard of care across both annuity and life insurance transactions provides consistent consumer protection and a consistent regulatory framework to ensure fair treatment regardless of product choice. Accordingly, the amendment clarifies the duties and obligations of insurance producers, or insurers where no producer is involved, by ensuring that any 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 or whether the product is a registered security. Further, the amendment provides for a best interest standard for in-force transactions, which include any modification or election of a contractual provision that generates new sales compensation. Inclusion of such in-force transactions is important for consistency and to address potential consumer harm arising out of such recommendations that are not covered by the existing Regulation 187. The same conflicts that exist when a producer recommends a purchase transaction can also be present when the producer recommends an in-force transaction. For example, a recommendation to purchase additional insurance under an existing policy, for which the producer receives compensation, presents the same potential conflicts as a recommendation to purchase the additional insurance under a new policy. In both instances, the producer should act in the best interest of the consumer. However, the revised proposal imposes fewer requirements where the in force transaction does not generate new sales compensation. This amendment adds consumer protections by prohibiting the producer from stating or implying that any recommendation is financial planning, comprehensive financial advice, investment management or related services or using titles such as financial planner or financial advisor unless the producer has a specific certification or professional designation in that area, an issue that has received widespread attention and scrutiny from other regulators. Producers are also prohibited from recommending a consumer to enter into a sales transaction unless the producer has a reasonable basis to believe that the consumer has the financial ability to meet the financial commitments under the policy. 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 products 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 sales transaction involving life insurance, and to document any life insurance sales recommendation subject to 11 NYCRR § 224.4(a) and (b) and, if relevant, to obtain a consumer signed statement documenting a consumer's refusal to provide suitability information and that transaction is not recommended if a consumer decides to enter into a transaction that is not based on the producer's or insurer's recommendation.

However, the amendment takes a principle-based approach to compliance with the requirements of the regulation, which is expected to greatly minimize costs. The proposal does not impose any particular systems or procedures for meeting the requirements of the regulation. Rather, insurers and producers are free to leverage existing systems and procedures. For example, most producers already have systems and procedures in place to document information about their clients and to document their interaction or conversations with their clients. These existing systems and procedures can also be used to document the client's suitability information and the basis for the producer's recommendation to the consumer. Also, insurers already have in place standards and procedures to comply with the suitability requirements of the existing regulation. Insurers can leverage these existing standards and procedures to meet the requirements of this amendment. 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. Likewise, many insurers were already preparing to implement the DOL Rule by making changes to processes, procedures and technology. Although, recent conflicting court decisions have left uncertainty about the implementation of the DOL Rule, much of the work has already been done. Some producers have indicated an intention to move forward with implementing a best interest standard regardless of what happens with the DOL Rule. The Department anticipates that many insurers have already incurred up-front costs to achieve compliance with the DOL Rule so these insurers can leverage the systems that are already in place to include additional requirements under this proposal which would have a de minimum impact on what has already been done. The Department believes that there will eventually be a cost savings to insurers and producers that are able to apply the same standards across all product types and avoid maintaining separate systems for separate product lines. Documentation benefits the insurer, the producer, the consumer, and is a prudent business practice.

Indeed, the Department anticipates that future costs may decrease over time by establishing one consistent best interest standard that will apply to all recommendations made for all product transactions. Additionally, costs borne by insurers, producers and consumers related to improper sales are anticipated to decrease over time as better-trained and supervised producers come into compliance with the regulation and the number of improper or conflicted sales decrease.

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.

There are currently over 160 licensed life insurance and annuity providers in New York State and approximately 143,000 insurance agents and 15,000 insurance brokers with the life insurance line of authority, each of which have different business models that may be impacted by the proposed amendment differently. These firms are also subject in various respects to the DOL Rule and, despite the uncertainty created by recent court cases, are at different levels of readiness for compliance with that regulation. The Department went to great lengths to ensure that the revisions to the proposed amendment were consistent with the core requirements of the DOL Rule but significantly less onerous in terms of supervision and compliance requirements. The Department believes that firms that have already brought themselves into compliance with the DOL Rule would have minimal additional costs to comply with the proposed amendment, regardless of whether or not the DOL Rule ultimately takes full effect. The Department further held multiple meetings with regulated entities and interested parties to ascertain which, if any, components of the proposed amendment might increase costs for particular firms; those provisions were then removed or significantly reduced in scope.

Importantly, the benefits of the regulation are expected to be substantial. Consumers often are unaware they have received conflicted recommendations from producers or insurers and the harm caused by such conflicts are not readily apparent, materialize over the many years of a life insurance policy or annuity contract or take the form of an "opportunity cost," i.e., the lost benefits from not having taken the option in the best interest of the consumer at the time. The elimination of conflicted recommendations to consumers is expected to yield cost savings to consumers in the form of lower cost and better suited product recommendations, lower transactions costs to remedy improper recommendations, fewer replacements of insurance policies and fewer complaints to producers and insurers over time.

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 sales recommendations for annuities, the amendment generally requires an insurance producer or insurer to document any sales recommendation for life insurance. 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 the replacement. The documentation required by this amendment with respect to life insurance is substantially similar to the requirements of the current Regulation 187 and Financial Industry Regulatory Authority ("FINRA") Rule 2111 with respect to annuities. Minimal additional paperwork, including obtaining a consumer signed statement, is expected to be required of most insurers in order to comply with the requirements of this amendment. In fact, there is potential for a long-term reduction in paperwork if a consistent standard of conduct applies across all product types. Insurers will not have to develop separate procedures, systems or training for each product type, source of funds, or standard, as applicable. Although some initial minimal costs may be expected, over time costs are likely to be reduced because of consistency.

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, if that rule is fully implemented in that both rules impose a best interest standard of care and a recordkeeping requirement. However, the area of potential duplication is

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; or where the annuity contract or life insurance policy results from reinvestment of qualified plan and IRA distributions. 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 currently no conflict. Also, since recent conflicting court decisions have left uncertainty about the implementation of the DOL Rule and the SEC process is uncertain, it is possible that there would be no overlap whatsoever.

8. Alternatives: Since the promulgation of Regulation 187 in 2013, the Department has monitored developments in suitability standards and has ascertained that additional oversight and regulation is needed to provide a level playing field and to protect consumers when they are considering the purchase of life insurance and annuities in New York State or are considering a modification to existing life insurance and annuities. The Department has participated in discussions with various stakeholders regarding the potential impact of the DOL Rule, finalized on April 8, 2016, and the proposed amendment on consumers, producers and insurers. The Department has been working to have the NAIC propose a viable model. The Department has conducted outreach to discuss issues that have arisen as a result of the DOL Rule.

The Department considered not implementing the amendment, but the Department has rejected this alternative because doing nothing would be disadvantageous to consumers. Moreover, New York consumers should not be denied the protections of this proposal because other regulators in other jurisdictions have not adopted similar protections within their areas of authority. The Department is the sole regulator for the overwhelming majority of insurance activities occurring in New York State. Federal agencies such as the DOL and SEC or self-regulatory agencies such as FINRA have only concurrent jurisdiction with the Department over only those products that are both insurance products and securities; the regulation of all other life insurance and annuity products and sales is within the sole purview of the Department. The Department maintains unique expertise related to comprehensive insurance markets and products that makes it appropriate for the Department to lead on issues of insurance regulation. A shortcoming of federal regulations, either by the DOL or the SEC, is that those entities' limited jurisdiction would create a two-tiered standard of conduct for different types of annuities and life insurance products which would be harmful and confusing for consumers and producers alike. 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 and life insurance that involve 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; or where the annuity contract or life insurance policy results from reinvestment of qualified plan and IRA distributions, 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 consistent regulatory scheme for all product types in New York State. It should be noted that recent conflicting court decisions have created uncertainty about the implementation of the DOL Rule.

10. Compliance Schedule: The amendment will take effect March 1, 2019. As of the effective date, insurers and producers must comply with the requirements of the rule for any transaction with respect to an annuity contract. Six months from the effective date, insurers and producers must comply with the requirements of the rule for any transaction with respect to a life insurance policy.

Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments for the 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 consistent 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 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, facts and analysis subject to 11 NYCRR § 224.4(a) and (b); a consumer's refusal to provide suitability information, if any, with a consumer signed statement; 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 recommendation with a consumer signed statement. Additionally, a producer may limit the range of policies recommended to consumers based on a captive or affiliation agreement with a particular insurer as long as required disclosures are made.

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

4. Compliance costs: Producers that are small businesses subject to this amendment will likely incur minimal costs because of this amendment. The amendment takes a principle-based approach to compliance with the requirements of the regulation, which is expected to greatly minimize costs. The proposal does not impose any particular systems or procedures for meeting the requirements of the regulation. Rather, producers are free to leverage existing systems and procedures. For example, most producers already have systems and procedures in place to document information about their clients and to document their interaction or

conversations with their clients. These existing systems and procedures can also be used to document the client's suitability information and the basis for the producer's recommendation to the consumer. Many producers are already documenting recommendations made to consumers, disclosing limitations to captive or affiliation agreements, and using a best interest standard of care for consumers. Accordingly, any costs incurred by producers that are small businesses subject to this amendment should be minimal, as the producers will already have in place standards and procedures that can be leveraged to comply with this amendment. Also, producers already have procedures in place to document their recommendations with respect to suitability of the sale of 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. Likewise, many producers were already preparing to implement the DOL Rule by making changes to processes, procedures and technology. Although, recent conflicting court decisions have left uncertainty about the implementation of the DOL rule, much of the work to prepare for the DOL rule has already been done. Some producers have indicated an intention to move forward with implementing a best interest standard regardless of what happens with the DOL Rule. The Department anticipates that many producers have already incurred up-front costs in anticipation of the DOL Rule so can leverage the systems that are already in place to include additional requirements under the Proposed Amendment which would have a de minimum impact on what's already been done. The Department believes that there will eventually be a cost savings to producers that are able to apply the same standards across all product types and avoid maintaining separate systems for separate product lines. Documentation benefits the producer and the consumer and is a prudent business practice.

Indeed, the Department anticipates that future costs may decrease over time by establishing one consistent best interest standard that will apply to all recommendations made for all product transactions. Additionally, costs borne by producers related to improper sales are anticipated to decrease over time as better-trained and supervised producers come into compliance with the regulation and the number of improper or conflicted sales decrease.

As stated above, there are approximately 143,000 insurance agents and 15,000 insurance brokers with the life insurance line of authority. It is not known, however, how many of them are small businesses, but each have different business models that may be impacted by the proposed amendment differently. These firms are also subject in various respects to the DOL Rule and, despite the uncertainty created by recent court cases, are at different levels of readiness for compliance with that regulation. The Department went to great lengths to ensure that the proposed amendment was consistent with the core requirements of the DOL Rule but significantly less onerous in terms of supervision and compliance requirements. The Departments believes that firms that have already brought themselves into compliance with the DOL Rule would have minimal additional costs to comply with the proposed amendment, regardless of whether or not the DOL Rule ultimately takes full effect. The Department further held multiple meetings with regulated entities and interested parties to ascertain which, if any, components of the proposed amendment might increase costs for particular firms; those provisions were then removed or significantly reduced in scope.

Importantly, the benefits of the regulation are expected to be substantial. Consumers often are unaware they have received conflicted recommendations from producers and the harm caused by such conflicts are not readily apparent, materialize over the many years of a life insurance policy or annuity contract or take the form of an "opportunity cost," i.e., the lost benefits from not having taken the option in the best interest of the consumer at the time. The elimination of conflicted recommendations to consumers is expected to yield cost savings to consumers in the form of lower cost and better suited product recommendations, lower transactions costs to remedy improper recommendations, fewer replacements of insurance policies and fewer complaints to producers over time.

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 across product lines.

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.

Revised Rural Area Flexibility Analysis for the 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, facts and analysis subject to 11 NYCRR § 224.4(a) and (b); the consumer's refusal to provide suitability information, if any, with a consumer signed statement; 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 with a consumer signed statement. Additionally, a producer may limit the range of policies recommended to consumers based on a captive or affiliation agreement with a particular insurer as long as required disclosures are made. 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, maintain, and audit a system of supervision that is reasonably designed to achieve the insurer's and producer's compliance with the amendment; establish procedures designed to prevent financial exploitation and abuse; provide to the consumer all relevant policy information used to evaluate a transaction; provide comparison information showing differences between fee-based and commission-based versions of the same product; 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, establish, maintain, and audit a system of supervision that is reasonably designed to achieve the insurer's and producer's compliance with the amendment; provide comparison information showing differences between fee-based and commission-based versions of the same product, and requires an insurer to provide a consumer with all relevant policy information. 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, facts and analysis subject to 11 NYCRR § 224.4(a) and (b); a consumer's refusal to provide suitability information, if any, with a consumer signed statement; 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 with a consumer signed statement.

However, the amendment takes a principle-based approach to compliance with the requirements of the regulation, which is expected to greatly minimize costs. The proposal does not impose any particular systems or procedures for meeting the requirements of the regulation. Rather, insurers and producers are free to leverage existing systems and procedures. For example, most producers already have systems and procedures in place to document information about their clients and to document their interaction or conversations with their clients. These existing systems and procedures can also be used to document the client's suitability information and the basis for the producer's recommendation to the consumer. Also, insurers already have in place the standards and procedures to comply with the suitability requirements of the existing regulation. Insurers can leverage these existing standards and procedures to meet the requirements of this amendment. Accordingly, any costs incurred by producers and insurers, including those located in a rural area, that currently sell annuities should be minimal. 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 that the costs should be significant. Likewise, many insurers had already been preparing to implement the rule recently issued by the U.S. Department of Labor ("DOL") under 29 C.F.R. 2510 ("DOL Rule") by making changes to processes, procedures and technology. Although, recent conflicting court decisions have left uncertainty about the implementation of the DOL rule, much of the work has already been done in anticipation of having to comply with the DOL Rule. Some producers have indicated an intention to move forward with implementing a best interest standard regardless of what happens with the DOL Rule. The Department anticipates that many insurers have already incurred up-front costs in anticipation of the DOL Rule so these insurers can leverage the systems that are already in place to include additional requirements under the Proposed Amendment which would have a de minimum impact on what's already been done. The Department believes that there will eventually be a cost savings to insurers and producers that are able to apply the same standards across all product types and avoid maintaining separate systems for separate product lines. Documentation benefits the insurer, the producer, the consumer, and is a prudent business practice.

Indeed, the Department anticipates that future costs may decrease over time by establishing one consistent best interest standard that will apply to all recommendations made for all product transactions. Additionally, costs borne by insurers, producers and consumers related to improper sales are anticipated to decrease over time as better-trained and supervised producers come into compliance with the regulation and the number of improper or conflicted sales decrease.

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.

There are currently over 160 licensed life insurance and annuity providers in New York State and approximately 143,000 insurance agents and 15,000 insurance brokers with the life insurance line of authority, each of which have different business models that may be impacted by the proposed amendment differently who may be located in rural areas. These firms are also subject in various respects to the DOL Rule and, despite the uncertainty created by recent court cases, are at different levels of readiness for compliance with that regulation. The Department went to great lengths to ensure that the proposed amendment was consistent with the core requirements of the DOL Rule but significantly less onerous in terms of supervision and compliance requirements. The Departments believes that firms that have already brought themselves into compliance with the DOL Rule would have minimal additional costs to comply with the proposed amendment, regardless of whether or not the DOL Rule ultimately takes full effect. The Department further held multiple meetings with regulated entities and interested parties to ascertain which, if any, components of the proposed amendment might increase costs for particular firms; those provisions were then removed or significantly reduced in scope.

Importantly, the benefits of the regulation are expected to be substantial. Consumers often are unaware they have received conflicted recommendations from producers or insurers and the harm caused by such conflicts are not readily apparent, materialize over the many years of a life insurance policy or annuity contract or take the form of an “opportunity cost,” i.e., the lost benefits from not having taken the option in the best interest of the consumer at the time. The elimination of conflicted recommendations to consumers is expected to yield cost savings to consumers in the form of lower cost and better suited product recommendations, lower transactions costs to remedy improper recommendations, fewer replacements of insurance policies and fewer complaints to producers and insurers over time.

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 as to why a Revised Statement Setting Forth the Basis for the Finding that the First Amendment to 11 NYCRR 224 (Insurance Regulation 187) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities is not required:

A Revised Statement Setting Forth the Basis for the Finding that the First Amendment to 11 NYCRR 224 (Insurance Regulation 187) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities is not required because the revisions to the proposed regulation do not change the statement regarding the need for a Job Impact Statement that was previously published.