Long Island BusinessNEWS

A Higher Standard

By: Claude Solnik

Even as the federal government delays key parts of regulations designed to increase standards applied to advice for retirement funds, New York State is looking at upping the bar for those selling life insurance and annuities.

The New York State Department of Financial Services has proposed adopting a "best interest" standard for brokers licensed to sell life insurance and annuities.

In other words, brokers by state law would be required to recommend a product that "best reflects the customer's interest" and not simply one that is "most profitable to the seller."

This would replace the much lower standard of a product that is "suitable," even if it's not the best, due to fees or other provisions that benefit insurers or sellers rather than the insured.

The Department of Financial Services said the rule in some respects mirrors federal regulations that would hold financial advisors to a "fiduciary" and "best interest" standard, requiring them to recommend what's best, not simply appropriate, for their clients – and not themselves.

The federal government has delayed much of that fiduciary rule until July of 2019, rather than implementing it at the start of 2018 as planned, now that the regulation tide turns under the Trump administration.

The United States Department of Labor had crafted its own new "fiduciary" rule regarding retirement advice, after a government report found U.S. retirees lose $17 billion annually because of advisors' conflicts of interest.

The U.S. Department of Labor initially said it found no legal reason to delay phase 1, but has since put on hold many provisions of these "fiduciary" rules, leading to questions as to whether they will be fully implemented or jettisoned as part of an effort to reduce regulation.

It's against this backdrop over a battle over what standard to hold advisors to, and the role of regulation, that New York State is seeking to increase its requirements for those selling annuities and life insurance.

The new state rules would go into effect following a 60-day public comment period after their Dec. 27, 2017, publication in the New York State Register.

"As Washington continues to ignore and roll back efforts to protect Americans, New York will continue to use its role as a strong regulator of the financial services and insurance industries to fight for consumers and help ensure a level playing field," Gov. Andrew Cuomo said in a written statement as he announced the plan.

The rules present a stark contrast between a federal government that is focused on reducing regulation and New York State's focus on using rules, including numerous procedures that come with costs, to look out for consumers.

The Department of Financial Services sees itself as doing what most consumers may already believe to be the case: insisting that brokers recommend what's best for the buyer, rather than talking up products that pay the biggest commissions.

"Consumers who purchase life insurance and annuity products deserve to have financial services providers act in their best interest when providing advice," Financial Services Superintendent Maria Vullo said in a written statement. "It is essential that a provider adhere to a higher standard of care and only recommend insurance and annuity products that are in the consumer's best interests."

Henry Montag, president of the TOLI Center East, an insurance consulting firm in Melville, called this new rule "a much needed regulation" that he believes could help "prevent what could have become a perfect storm in the life insurance industry."

Montag said years of reduced interest rates, "neglect on the part of those responsible for the management of the policies" and the insurance industry's increase of cost of insurance already have created problems for consumers.

He said these factors can cause "an already deteriorating situation of an increasing number of policies to expire prematurely," making good advice and transparency critical.

The federal Department of Labor Conflict of Interest Rule, which has been put on hold, expands the definition of investment advice to include some annuity and life insurance sales.

New York's "best interest standard of care," however, would apply to all sales of life insurance and annuities, rather than be limited to the specific cases covered by the federal rule.

The state regulation defines the best interest of a consumer as when a transaction "is in furtherance of a consumer's needs and objectives and is recommended to the consumer without regard to the financial interest of the product seller."