

Agenda

CEFLI Compliance & Ethics Committee Meeting
(Held in Conjunction with the CEFLI National Compliance & Ethics Forum)
Thursday, June 13, 2019
2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT
Dial In: (800) 239-9838
Passcode: 3646069

- I. Welcome and Introduction. Donald J. Walters
 - A. Antitrust Statement.
- II. Approval of Minutes – May 15, 2019 Meeting. The Committee
- III. Issues for Review. The Committee
 - A. SEC Regulation Best Interest.

On Wednesday, June 5, the United States Securities and Exchange Commission (SEC) approved Regulation Best Interest. Regulation Best Interest was one of a package of rule proposals and interpretive guidance approved by the SEC.

(The SEC Release pertaining to Regulation Best Interest is 771 pages in length. We have attached those pages of the Release that identify the text of the provisions of Regulation Best Interest. A copy of the full SEC Release pertaining to Regulation Best Interest can be found through the following link:

<https://www.sec.gov/rules/final/2019/34-86031.pdf>)

Regulation Best Interest may prove to be one of the most significant modifications of the manner in which producers/registered representatives will distribute products within the financial services industry over the years ahead.

Several key provisions of Regulation Best Interest will be discussed including:

1. Disclosure Obligation.

Regulation Best Interest will require broker-dealers and their registered representatives to provide retail customers with disclosure in writing of:

All material facts relating to the scope in terms of the relationship with the retail customer, including:

- That the firm or its registered representative is acting as a broker or dealer with respect to the recommendation;
- Material fees and costs of the transactions, holdings and accounts;
- The type and scope of services provided to the retail customer, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail customers; and
- All material facts relating to conflicts of interest that are associated with the recommendation.

The Committee will be asked to discuss Regulation Best Interest's Disclosure Obligation and how it may affect existing disclosure practices.

2. Care Obligation.

Regulation Best Interest will require broker-dealers and their registered representatives to exercise reasonable diligence, care and skill in making a recommendation to:

- Understand the potential risks, rewards and costs associated with the recommendation and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers;
- Have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards and costs associated with the recommendation and does not place the financial or other interest of the broker-dealer or its registered representatives ahead of the interest of the retail customers; and
- Have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker, dealer or such natural person making the series of recommendations ahead of the interest of the retail customer.

The Committee will be asked to discuss Regulation Best Interest's Care Obligation and the extent to which it may affect current industry practices.

3. Compliance Obligation.

In addition to the obligations noted above, broker-dealers will be required to establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest.

The Committee will be asked to discuss their company's strategies to develop appropriate policies and procedures reasonably designed to achieve compliance with Regulation Best Interest.

4. Other Possible Implications.

a. Increased Introduction of Fiduciary Legislation in the States.

Some commentators who expressed concern regarding the rigor of Regulation Best Interest following its release have indicated that Regulation Best Interest's approval by the SEC could lead to an increase in the introduction of fiduciary legislation in the states.

The Committee will be asked to discuss their perspectives on whether the SEC's approval of Regulation Best Interest may lead to an increase in the introduction of fiduciary legislation in the states.

b. Modifications to FINRA Rule 2111 (Suitability).

The SEC's approval of Regulation Best Interest may lead to a review of whether FINRA Rule 2111 pertaining to suitability will require revisions or modifications or whether FINRA will eliminate Rule 2111 and will establish a new rule to accommodate Regulation Best Interest.

The Committee will be asked to discuss their perspectives on whether the SEC's approval of Regulation Best Interest may lead to modifications to FINRA Rule 2111 (Suitability).

c. Modifications to the NAIC Suitability in Annuity Transactions Model Regulation.

The NAIC Suitability in Annuity Transactions Model Regulation allows life insurance companies to rely upon a "safe harbor" provision to enter into contractual agreements with third-party distribution organizations such as broker-dealers to conduct supervision of annuity suitability provided the transaction is subject to FINRA's suitability standards.

To the extent that FINRA will modify (or eliminate) its current suitability standards, then the NAIC may need to consider modifying the “safe harbor” provision currently embodied within the NAIC Suitability in Annuity Transactions Model Regulation to allow life insurers to rely upon a third-party distributor’s compliance with FINRA standards to meet the supervision of annuity suitability requirements under the NAIC Suitability in Annuity Transactions Model Regulation.

The Committee will be asked to discuss their perspectives on whether the SEC’s approval of Regulation Best Interest may lead to modifications of the “safe harbor” provision under the NAIC Suitability in Annuity Transactions Model Regulation.

d. Other Considerations.

There may be any other considerations that are prompted by the SEC’s approval of Regulation Best Interest.

The Committee will be asked to discuss whether there may be any other considerations that are prompted by the SEC’s approval of Regulation Best Interest.

B. 401(k) Rollover Transactions by Non-Securities Licensed Personnel.

With a growing number of individuals nearing retirement, financial professionals are often presented with questions concerning whether to “roll over” an individual’s 401(k) retirement plan into another financial product (or financial products) to meet their retirement needs.

It is not uncommon for 401(k) retirement plans to hold their assets in the form of mutual funds or other securities.

Securities and insurance regulators have recently reminded producers that, to the extent that a producer may be an insurance-only licensee, making a recommendation to “roll over” securities that currently reside within a 401(k) retirement plan in order to purchase a non-securities products may constitute a transaction for which the producer is not appropriately licensed.

Stated differently, an insurance-only producer is not permitted to make recommendations concerning the disposition of assets currently invested in securities that reside within a 401(k) retirement plan in order to recommend the purchase of a non-securities products (e.g., a fixed annuity) for which the insurance-only producer may be appropriately licensed.

The Committee will be asked to discuss whether issues associated with 401(k) “rollovers” are analyzed at life insurance companies from a licensing perspective in order to determine whether the types of assets being recommended for a “rollover” are securities and, therefore, would require a producer making such a recommendation to be securities licensed (in addition to being insurance licensed if the recommendation is to place the “rollover” proceeds into an insurance product such as an annuity).

C. Vermont Bulletin No. 30.

During the Committee’s last meeting, an issue was presented concerning whether states will require a life insurer to report any late filing penalties that may be assessed by other state insurance departments.

Our discussion indicated that Vermont is one of the states that does require life insurers to report late filing penalties incurred from other state insurance departments.

The authority for requiring insurers to report the imposition of a fine or penalty can be found within Vermont Bulletin No. 30. (See copy attached.)

A question has arisen concerning whether life insurers are reporting the elements of Vermont Bulletin No. 30 to the Insurance Division of the Vermont Department of Financial Regulation and whether it may be appropriate to inquire about the applicability of Vermont Bulletin No. 30 (given that it was issued in 1975).

The Committee will be asked to discuss their practices with respect to complying with Vermont Bulletin No. 30 and how such reports are provided to the Insurance Division of the Vermont Department of Financial Regulation.

D. Utah House Bill 55 - Section 31 8-21-311 – Delivery of Policy or Certificate.

Earlier this year, the Utah Legislature passed House Bill 55 which included various amendments to the Utah Insurance Code.

One of the amendments to the Utah Insurance Code pertained to Delivery of [a] Policy or Certificate.

Section 31 A-21-311 was amended to read:

(1)(a) An insurer issuing an individual or group life insurance policy or an accident and health insurance policy shall deliver a copy of the policy to the policyholder as soon as practicable but no later than 90 days after the date on which the coverage is effective.

(See Page 81 of the attached copy of Utah House Bill 55.)

The question presented pertains to how companies may be interpreting the date upon which “coverage is effective.” For example, is it the date the policy is placed in force or the policy issue date? Given that Utah permits an insurer to backdate a policy up to one-year, some reasonable persons may interpret the coverage effective date to mean the date on which the policy is in force.

The Committee will be asked to discuss its interpretation and compliance strategies associated with the Delivery of Policy or Certificate amendments to the Utah Insurance Code as found within recently enacted Utah House Bill 55.

E. NAIC Lost Life Insurance Policy Locator Service.

As the Committee has discussed in the past, the NAIC established its Lost Life Insurance Policy Locator Service to allow life insurance companies to participate on a voluntary basis to assist their efforts to identify potential beneficiaries of life insurance policy benefits.

Though the NAIC has encouraged all states to participate in its Lost Life Insurance Policy Locator Service, not all states have elected to do so. Notable examples include: New York, Illinois and Michigan.

The Committee will be asked to discuss their experiences with respect to participating in the NAIC Lost Life Insurance Policy Locator Service and whether their companies also utilize the lost policy locator services provided by individual states.

F. South Carolina Bulletin No. 2019-02 - Rescission of a Life Insurance Policy

At a previous Committee meeting, we discussed that South Carolina recently issued Bulletin No. 2019-02 “reminding” life insurers doing business in that state that, per SC Code §38-63-220(d), an insurer can only “vacate” or rescind coverage on an individual life policy by “instituting proceedings.” (See copy attached.)

The language of the Bulletin seems to suggest that all rescissions must be commenced by judicial action (e.g., DJA or other civil actions). However, the Bulletin also states:

“A letter or other notice to the insured stating that the policy has been canceled or rescinded does not qualify as a *proceeding to vacate a policy* under South Carolina law.” (Underline added.)

Questions continued to be presented concerning how insurers are handling the requirements of South Carolina Bulletin No. 2019-02. Specifically:

- *Do companies consider that there is mutual agreement if the policy owner cashes the check for a refund?*
- *Are companies obtaining a signed release/agreement stating that the rescission is mutual?*
- *Are companies filing suit on all rescissions in South Carolina?*

The Committee will be asked to discuss their practices to comply with the requirements of South Carolina Bulletin No. 2019-02 with respect to rescissions.

IV. Reporting Items.

CEFLI Staff.

A. NAIC Annuity Suitability Working Group Drafting Session - June 20 - Columbus, Ohio.

The NAIC Annuity Suitability Working Group has indicated they will conduct a drafting session to consider possible modifications to the NAIC Suitability in Annuity Transactions Model Regulation on Thursday, June 20 in Columbus, Ohio.

The meeting will be moderated by NAIC Annuity Suitability Working Group Chair and Ohio Director, Jillian Froment.

CEFLI will monitor these developments and provide updated information, as appropriate.

B. Department of Labor Will Issue a Revised Fiduciary Rule in December 2019.

The US Department of Labor has indicated through its Spring regulatory agenda that it plans to issue a revised version of its Fiduciary Rule (and its Prohibited Transactions Exemptions) in December 2019.

Previous media reports indicated that the DOL staff was working closely with the SEC staff in its development of Regulation Best Interest. It is anticipated that a revised DOL Fiduciary Rule will seek to be aligned with the requirements of the SEC's Regulation Best interest.

C. NASAA, FINRA and SEC Issue Senior Safe Act Guidelines.

The North American Securities Administrators Association, FINRA and the SEC recently issued guidelines for organizations to comply with the provisions of the recently enacted Senior Safe Act. (See copy attached.)

For firms and individuals that satisfy the Senior Safe Act's requirements, the Senior Safe Act provides immunity from liability in any civil or administrative proceeding for reporting potential exploitation of the senior citizen.

D. House Passes SECURE Retirement Bill.

The US House of Representatives passed the Setting Every Community Up for Retirement Enhancement (SECURE) Act on a bipartisan basis to make it easier for small businesses to offer a retirement plan, ease use of annuities and 401(k) plans and raise the required minimum distribution age.

The bill has been sent to the Senate for its consideration.

V. CEFLI Activities.

A. 2019 CEFLI Annual Conference and Compliance Leadership Forum - Nashville, Tennessee - September 11-13.

Registration is now open for the 2019 CEFLI Annual Conference and Compliance Leadership Forum which will be taking place at the JW Marriott Hotel in Nashville, Tennessee on September 11-13.

We hope you will be able to join us!

VI. Next Meeting.

The next meeting of the Committee is scheduled to take place:

July 24, 2019 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

The Committee will hold its remaining 2019 meetings as follows:

August 14, 2019 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

September 25, 2019 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

October 16, 2019 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

November 13, 2019 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

December 18, 2019 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Please mark your calendar and plan to join us!

VII. Other Business.

The Committee will be asked to identify and discuss any other business to be brought before the Committee.

DRAFT

**Minutes
Meeting of the
CEFLI Compliance & Ethics Committee
April 17, 2019
2 PM EDT/1 PM CDT/11 AM PDT**

A meeting of the CEFLI Compliance & Ethics Committee (the "Committee") was held via conference call on Wednesday, April 17, 2019 at 2 PM EDT/1 PM CDT/11 AM PDT.

The following CEFLI member company representatives participated in the meeting:

Molly Akin, Ohio National Financial Services
Marcie Allen, Texas Life
Renee Ambrosy, CNO Financial
Lauren Barbaruolo, Oxford Life Insurance
Chad Batterson, Athene
Meagan Bellin, Securian Financial
Ann Biznzer, Cincinnati Life
Katelynn Blalock, Western & Southern Financial Group
Diane Boyette, Southern Farm Bureau Life
Vickie Bulger, Primerica Life Insurance
Laura Bullard, Forester Financial
Bryan Brewster, Wilton Re
Amanda Capps, Symetra Life
Andrea Christensen, Sagicor
Ryan Cloud, Guggenheim Life
Allison Corrado, Lombard International
Steve Corbly, Cincinnati Life
Jessica English, Thrivent
Rita Fenani, Pacific Life
Jill Fiddler, Assurity Life
Patrick Garcy, Sagicor
Paula Gentry, Cincinnati Life
Jim Golembiewski, Sagicor
Ken Gould, Protective Life
Dennis Herchel, SBLI
Nancy Hill, Pacific Life
Lisa Holland, State Farm Life

Minutes – Meeting of the CEFLI Compliance & Ethics Committee
April 17, 2019

Nathan Huss, Sammons
Laurie Lewis, Amica
Martin Karp, Oxford Life Insurance
De Keimach, Delaware Life
Megan Knatt, American Enterprise
Michele Kulish Danielson, American Enterprise
Brian Leary, Fidelity Investments
Dan Leblanc, SBLI
Kathy Mangum, Southern Farm Bureau Life
Dave Milligan, American Equity
Matt Missik, Pacific Life
Deb Naegele, Cincinnati Life
Mark Neidinger, National Guardian Life
Jim Odland, Thrivent
Sabrina Olender, Foresters Financial
Monique Pascual, Pacific Guardian Life
Liza Perry, USAA
Kathy Pettit, John Hancock
Megan Phillips, Principal Life
Tony Poole, AAA Life
Christine Poppe, Cuna Mutual
Daniel Reinecke, Gerber Life Insurance
Michael Roberson, Pacific Guardian Life
Sally Roudebush, Lincoln Heritage Life
Cara St. Martin, Allianz
Scott Schabel, Jackson National Life
Angie Schneider, Cincinnati Life
Ryan Schwoebel, Protective Life
Lori Straight, Sammons
Carla Strauch, Thrivent
Angelea Taul, Western & Southern Financial Group
Jill Terry, Cincinnati Life
Louisa Treber, Securian Financial
Bill Turner, American Fidelity
Laura Van Laningham, Illinois Mutual
John Vitou, Jackson National Life
Rochelle Walk, Wilton Re
Michelle Ward, Erie Family Life
Larry Welch, Citizens Inc
Stacey White, American National
Emily Wilburn, Illinois Mutual
Pam Wilson, Cincinnati Life
Kim Yerigan, Cincinnati Life

Mallory Bennett, Kelly Ireland and Donald Walters of CEFLI also participated in the meeting.

I. Welcome and Introduction.

The meeting began with a recitation of CEFLI's anti-trust statement.

II. Approval of Minutes – March 28, 2019 Meeting.

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the March 28, 2019 meeting are hereby approved.

III. Issues for Review.

A. California Senate Bill 179 - The Gender Recognition Act.

California recently enacted Senate Bill 179 which became effective on January 1, 2019 and requires an applicant when applying for an original driver's license or a renewal driver's license to choose a gender category of female, male or nonbinary.

This California law raises an interesting question concerning how life insurance companies may be accommodating applicants who may select a non-binary gender choice in their applications for life insurance and annuity products. Other states are reportedly considering similar types of legislation.

The Committee was asked to discuss their company's practices with respect to accommodating applicants who may select a non-binary gender choice in their applications for life insurance and annuity products.

A Committee member indicated that they have not amended their application to deal with this issue and have not experienced any challenges from applicants on this basis.

A Committee member reported that their research shows non-binary designation requirements exist in some fashion in AR, CA, CO, DC, ME, MN, NJ, NYC, OR and WA.

Some Committee members have taken honorifics off communications with policyholders, addressing correspondence to individuals by name rather than using "Mr." or "Mrs."

A Committee member indicated that their filed applications only have two gender options, and their online applications require an answer to this question in order to proceed to the next questions, which is a challenge if someone wants to select something other than M/F.

The issue of gender on a driver's license might arise with respect Know Your Customer and using the driver's license as identification for medical records, which is a current practice for insurers.

B. Anti-Rebating Laws and Innovation Strategies.

During the recent NAIC Spring National Meeting, the Innovation and Technology (EX) Task Force examined the extent to which anti-rebating laws may serve as a possible impediment to pursuing various innovation strategies.

As an example, scenarios were identified in which insureds may be encouraged to accept certain items, such as a "wearable," that may provide the insurer with a broader range of information that may allow an applicant to qualify for more favorable rates or receive other benefits.

It was acknowledged that only a handful of states maintain anti-rebating laws and other states have recently repealed them. Therefore, the Task Force is examining the question of whether anti-rebating laws are necessary.

The Committee was asked to discuss the extent to which compliance may be involved in the development of innovation strategies and whether issues associated with anti-rebating laws may have impacted the implementation of a possible innovation strategy.

A Committee member reported having a recent experience regarding wanting to offer a cloud-based storage service as a benefit to policyholders. The company tried to put a provision in the contract to offer that type of service free as part of the chassis of the contract and found that they faced significant opposition from several states that wouldn't approve the contract filing because the benefit wasn't insurance and was considered an illegal inducement.

The company in question opted to offer the cloud-based storage benefit to in-force customers only to get around the rebating issue. They would prefer that regulators find a way to allow innovative benefits within the four corners of the contract rather than abandoning rebating laws, which would have implications for producers.

C. Role of Compliance in Development of Policies and Procedures Related to Social Media, Text Messaging and Other Electronic Communication Methods by Producers.

Over the past several years, life insurance companies have examined their policies and procedures to determine whether to permit producers to use social media, text messaging and other electronic communication methods in communications with customers.

The Committee was asked to discuss whether their company conducts a periodic review of their current policies and procedures with respect to the use of social media, text messaging and other electronic communication methods by producers with customers and, if so, to what extent compliance may be involved in decisions to modify and update existing policies and procedures.

A Committee member indicated that they have a regular 2-3-year review cycle for all policy and procedures. They will also review policies at the request of the producer to determine if new methods of communication may be permissible.

Another Committee member reported that this would fall under their regular ad review process and would also have implications from a records retention standpoint for these types of communications.

D. Staffing Trends within Compliance Departments – Data Scientists/Operations Staff.

Compliance departments continue to hire professionals who possess a range of skills that may not be considered traditional life insurance company compliance skills. For example, it has been reported that many life insurance company compliance departments are building their staffs to attract individuals who possess expertise in non-traditional compliance areas such as data analysis and other quantitative skill sets.

The Committee was asked to discuss their observations with respect to trends in hiring practices among compliance departments at life insurance companies and whether their companies have considered adding professionals with non-traditional compliance expertise such as data analytics to their existing staff.

Several Committee members reported an increase in the hiring of individuals with non-traditional compliance expertise, such as Underwriting, New Business, Marketing, Internal Audit, Client Services, IT and Producer Resources.

One Committee member indicated that their Compliance staff is comprised of approximately 50/50 of those with a compliance background and those from other business disciplines and another indicated being the only career compliance professional in a staff of five.

E. Identity Verification Practices.

In order to meet a variety of different compliance requirements, life insurance companies take steps to verify the identity of new customers as well as existing customers.

Recognizing that identity verification practices may differ from company to

company, a question has been posed to determine what types of tools/software companies may be using to comply with identity verification laws and regulations as well as Know Your Customer rules for various types of transactions.

The Committee was asked to discuss their company's identity verification practices and whether these practices may differ according to the manner in which a product may be sold (i.e., direct-to-consumer sales) or whether these practices may differ for new customers versus existing customers.

A Committee member volunteered that they have starting using Pindrop for call center ID and verification. Accurint was used in the past, but Pindrop has been a slightly lower-cost solution with cleaner results.

Other ID and customer verification tools used by Committee members include ID Verify by LexisNexis and CLEAR from Thomson Reuters.

Most of the tools used focus on call center and online verification of customers though such things as voice-recognition and knowledge-based verification of customer information.

F. New York Circular Letter No. 1 - Accelerated Underwriting - Adverse Underwriting Decision Notifications.

The New York Department of Financial Services issued Circular Letter No. 1 earlier this year regarding the use of external consumer data and information sources in underwriting for life insurance.

Within the Circular Letter, the New York Department of Financial Services confirmed that:

“An adverse underwriting decision would include the inability of an applicant to utilize an expedited, accelerated or algorithmic underwriting process in lieu of a traditional medical underwriting.”

The Circular Letter also references New York Insurance Law §4224 (a)(2) which requires insurers to notify the insured or potential insured of the right to receive the specific reason or reasons for declination, limitation, rate differential or other adverse underwriting decision.

The Committee was asked to discuss whether their companies may have modified their existing notifications of an adverse underwriting decision to include circumstances where an insured or potential insured would not be eligible to undergo accelerated underwriting in lieu of a traditional medical underwriting.

A Committee member indicated that companies often have eligibility questions that must be answered to determine if a customer is eligible for accelerated underwriting. Ineligibility would not be considered an adverse decision.

G. South Carolina Bulletin No. 2019-02 - Rescission of a Life Insurance Policy.

South Carolina recently issued Bulletin No. 2019-02 “reminding” life insurers doing business in that state that, per SC Code §38-63-220(d), an insurer can only “vacate” or rescind coverage on an individual life policy by “instituting proceedings.”

The Bulletin further states: (1) “A proceeding to vacate a policy is a judicial proceeding commenced to cancel the policy or have it declared null and void”; and (2) “Unilateral rescissions of life insurance policies violate South Carolina law.”

The language of the Bulletin seems to suggest that all rescissions must be commenced by judicial action (e.g., DJA or other civil actions). However, the Bulletin also states:

“Thus, the South Carolina General Assembly mandated that if an insurer wanted to challenge the truthfulness of the application, it must do so during the first two years of the policy. *After the policy has been in effect for two years, the application cannot be challenged on this basis.*”
(Emphasis added.)

The Bulletin further states: “A letter or other notice to the insured stating that the policy has been canceled or rescinded does not qualify as a proceeding to vacate a policy under South Carolina law.” (Underline added.)

This language suggests that, per the Bulletin, the South Carolina Department of Insurance is focused on live rescissions within the first two years from “date of issue.”

The Committee was asked to discuss their views on the “unilateral rescission” prohibition, two-year time limit on “challenges” to the truthfulness of the application, and the “judicial proceedings” mandate found within South Carolina Bulletin No. 2019-02; especially as to whether these requirements apply only to live rescissions or any rescission.

A Committee member indicated that their contracts do not allow for unilateral rescission and a legal action would have to be filed by the company for rescission.

Another Committee member reported that South Carolina was the last state to change their contestability law from “during the lifetime of the insured” to 2 years from the policy’s effective date.

Some Committee members are troubled by the Bulletin and the case (SC Supreme Ct. v Carroll) it is based on, and at least one Committee member has retained outside counsel to help them navigate the interpretation and requirements.

IV. Reporting Items.

A. UPDATE: New Illinois Law - Sexual Harassment Prevention Training.

During the Committee’s March 28 meeting, an issue was presented with respect to a new Illinois Law (20 ILCS 2105/2105/-15.5) that requires sexual harassment prevention training for any profession that has continuing education requirements.

CEFLI staff reported that, subsequent to the meeting, a member of the Committee provided guidance indicating that the Illinois Law requiring sexual harassment prevention training was deemed to be inapplicable to the insurance industry.

B. UPDATE: OR Senate Bill 769 - Redacting of Social Security Numbers in Consumer Correspondence and Document Destruction Policies.

Over the past several months, the Committee has discussed the potential compliance implications of a recently enacted Oregon law (ORS § 646A.620) that was read to prohibit the printing, displaying or posting of Social Security numbers on, for example, any mail that is “part of any documentation the consumer requested for a transaction or service, unless the Social Security number is redacted.”

CEFLI staff reported that with the assistance of John Mangan of the ACLI, we have been able to determine that the Oregon Division of Financial Regulation has confirmed that ORS § 646A.620 does not change the rules of delivery of policies and applications in the life insurance industry.

C. UPDATE: Maryland Fiduciary Standard Legislation Fails.

CEFLI staff reported that Maryland recently introduced legislation entitled the Financial Consumer Protection Act of 2019 (SB 786) that would require both registered representatives with broker-dealers and life insurance producers to act as fiduciaries with “a duty to act in the best interest of the customer without regard to the financial or other interest of the person or firm providing the advice.”

The Maryland Senate Finance Committee disapproved of the Financial Consumer Protection Act, which included a provision that would impose a fiduciary duty on financial professionals operating in Maryland. Therefore, the legislation failed to get enacted in the 2019 session of the Maryland Legislature.

D. New Jersey Introduces Fiduciary Rule.

CEFLI staff reported that the New Jersey State Securities Bureau recently released a rule that would impose a fiduciary duty on broker-dealer registered representatives.

The rule proposal would subject registered representatives of broker-dealers (a “broker”) operating in New Jersey to a fiduciary standard rather than the current FINRA suitability standard.

A broker who fails to act as a fiduciary would be engaging in an “unethical or dishonest business practice.”

Many commenters on a pre-proposal urged New Jersey to wait until the SEC issues its final version of Regulation Best Interest.

Comments on the New Jersey proposed rule are due by June 14.

E. FINRA Chief Legal Officer Sees Changes to Suitability Rule.

CEFLI staff reported that Robert Colby, FINRA’s Chief Legal Officer, recently indicated that FINRA will either revise its current Suitability Rule once the SEC’s Regulation Best Interest is final or will eliminate it entirely.

The goal will be to eliminate any overlap between the SEC’s Regulation Best Interest and FINRA’s Suitability Rule so Regulation Best Interest and FINRA’s Suitability Rule are “completely aligned.”

F. House Financial Services Committee Approves Cannabis Safe Harbor Bill for Insurers and Banks.

CEFLI staff reported that the House Financial Services Committee recently approved HR 1595, the Secure and Fair Enforcement Banking Act of 2019, which would provide access to financial services for cannabis-related businesses and service providers. An amendment to the legislation included a safe harbor for insurers that wish to provide financial services to cannabis -related businesses and service providers in states that have legalized marijuana.

G. Personnel Matters - Allison Lee Nominated for SEC Vacancy.

CEFLI staff reported that President Trump nominated Allison Lee, a former SEC enforcement attorney, for a vacancy on the Securities and Exchange Commission. Ms. Lee was reported to be a favored candidate among many Democrats.

If the Senate confirms Ms. Lee, she would replace Kara Stein, also a Democrat, on the Commission.

V. CEFLI Activities.

A. Next Meeting: Regulation 187 Issue Forum - Thursday, April 25 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT.

The next meeting of the CEFLI Regulation 187 Issue Forum is scheduled to take place on Thursday, April 25 at 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT.

A call for agenda items will be issued within the next several days.

Please mark your calendar and plan to join us.

B. Compliance Fundamentals Training Conference - May 8-10 - Austin, Texas.

On May 8-10, CEFLI will be conducting its Compliance Fundamentals Training Conference at The Driskell Hotel in Austin, Texas.

CEFLI's Compliance Fundamentals Training Conference is available free of charge as part of your company's membership benefits. The Conference is designed to provide education and training for those who may be new to the life insurance industry or those who may be new to the compliance function within a life insurance company.

Registration for the Conference is available online via CEFLI's website. A copy of the preliminary program for the Conference is attached.

We hope to see you in Austin on May 8-10!

C. *New Conference* - National Compliance & Ethics Forum - Des Moines, Iowa - June 12-13.

CEFLI is pleased to introduce a new 2019 CEFLI National Compliance & Ethics Forum. The 2019 National Compliance & Ethics Forum will take place at the Renaissance Savery Hotel in Des Moines, Iowa on June 12-13.

Minutes – Meeting of the CEFLI Compliance & Ethics Committee
April 17, 2019

The new 2019 National Compliance & Ethics Forum will consolidate and supplant our previous Regional Compliance Forums.

Like our previous Regional Compliance Forums, the agenda for the National Compliance & Ethics Forum will be developed through the submission of issues for discussion by those who register to attend the Forum. Participation will be limited exclusively to member company representatives to establish an open environment for our discussions.

The 2019 CEFLI National Compliance & Ethics Forum is free of charge to all CEFLI member company representatives as a benefit of your company's CEFLI membership.

Registration to attend the Forum is now available via the CEFLI website. You also may make hotel reservations at the Renaissance Savery Hotel through the following link:

<https://www.marriott.com/event-reservations/reservationlink.mi?id=1555102840077&key=GRP&app=resvlink>

We hope you will be able to join us in Des Moines on June 12-13 for this unique opportunity to “connect” with your fellow industry professionals from across the country!

D. Privacy Webinar - Tuesday, April 30.

CEFLI and Mayer Brown will conduct a webinar on the California Consumer Privacy Act on Tuesday, April 30 at 1 PM EDT/12 Noon CDT/11 AM MDT/10 AM PDT.

Please mark your calendars and plan to join us!

VI. Next Meeting.

The Committee will hold its next meeting on May 15, 2019 - 2 PM EDT/1 PM CDT/12 Noon MST/11 AM PDT.

The Committee will hold further 2019 meetings as follows:

June 11, 2019 - 2 PM EDT/1 PM CDT/12 Noon MST/11 AM PDT
July 24, 2019 - 2 PM EDT/1 PM CDT/12 Noon MST/11 AM PDT
August 14, 2019 - 2 PM EDT/1 PM CDT/12 Noon MST/11 AM PDT
September 25, 2019 - 2 PM EDT/1 PM CDT/12 Noon MST/11 AM PDT
October 16, 2019 - 2 PM EDT/1 PM CDT/12 Noon MST/11 AM PDT
November 13, 2019 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST
December 18, 2019 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Minutes – Meeting of the CEFLI Compliance & Ethics Committee
April 17, 2019

Please mark your calendar and plan to join us!

VII. Other Business.

There being no further business to discuss, the meeting was adjourned.

Vermont Insurance Division

BULLETIN 30: Legal Actions Involving Other Insurance Departments

March 19, 1975

Pursuant to V.S.A. 3561 and 3562, I am requesting that all insurance companies doing business in Vermont maintain a list, in accordance with the format at the end of this Bulletin, of the following actions by the insurance department of any other state against the insurance company or by the insurance company against the insurance department of any other state, which involves any allegation of violation of law or regulation, and which results in any of the following dispositions:

- 1) Issuance of a court order or court adjudication, including a dismissal;
- 2) Issuance by an insurance department of an order requiring the insurance company to cease and desist from engaging in a specified act or practice;
- 3) Imposition of a fine or penalty;
- 4) Execution of a consent order, stipulation or formal agreement containing
 - a) an admission of violation of law;
 - b) a formal order or agreement to cease and desist from engaging in any specified act or practice; or
 - c) a fine or penalty;
- 5) Revocation or suspension of a company license;
- 6) Company conservatorship;
- 7) Removal of a policy form; or
- 8) Formal hearing by an insurance department.

Actions resulting in dispositions under items 5 through 7 above shall be

reported to this Department immediately. All reportable actions which were initiated, pending or disposed of in 1973 or 1974 shall be included on a list to be filed with this Department no later than April 15, 1975. For 1976 and thereafter the notification form shall be submitted as part of the annual report. If no reportable actions occurred for a given year, this shall be indicated affirmatively in the notification form.

A reportable action shall not include:

- 1) an action not involving the insurance department of any other state;
- 2) a communication between an insurance department of any other state and an insurance company involving an interpretation of, or a change in a financial statement;
- 3) an action by a policyholder against an insurance company for a cancellation or underwriting decision, except as it results in the institution of a reportable action or proceeding by an insurance department of any other state against an insurance company;
- 4) an action or proceeding by an insurance department of any other state against an individual agent except where the insurance company is joined as a party by the department.

Notification shall conform with the following format:

I. Heading: Notification of Legal Actions Involving Insurance Departments of Other States.

II. Basic Data: Name of company, address of company, date of filing.

Actions Reported:

III. State

IV. A brief description of the nature of the action

V. A brief description of the disposition

VI. Date of initiation of action

VII. Date of disposition

James A. Guest

COMMISSIONER OF BANKING AND INSURANCE



South Carolina Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201


HENRY McMASTER
Governor

RAYMOND G. FARMER
Director

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

BULLETIN NUMBER 2019-02

TO: Insurers Writing Life Insurance in South Carolina

FROM: Raymond G. Farmer
Director of Insurance 

SUBJECT: Compliance with S.C. Code §38-63-220(d) Rescission of a Life Insurance Policy

DATE: April 3, 2019

I. PURPOSE

It has come to the attention of the South Carolina Department of Insurance (DOI) that there may be some life insurers who may be attempting to rescind life insurance policies in a unilateral manner inconsistent with the requirements of the South Carolina insurance laws. The purpose of this bulletin is to remind insurers who issue life insurance policies in the State of South Carolina that they are required to include and comply with the Required Provisions set forth in S.C. Code Ann. §38-63-220.

II. DISCUSSION

Life insurance policies issued in South Carolina must strictly adhere to the statutory provisions set forth in S.C. Code §38-63-220, specifically S.C. Code §38-63-220(d). This provision provides, in pertinent part, that policies must include:

a provision that the policy and any rider or supplemental benefits attached to the policy are incontestable as to the truth of the application for insurance and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. Any rider or supplemental benefits subsequently attached to the policy are incontestable as to the truth of the application for the rider or supplemental benefits and to the representations of the insured individual after they have been in force during the lifetime of the insured for a period of two years from their date of issue. *If an insurer institutes proceedings to vacate a policy on the ground of the falsity of*

the representations contained in the application for the policy, the proceedings must commence within the time permitted in this subsection; (emphasis added).

Thus, the South Carolina General Assembly mandated that if an insurer wanted to challenge the truthfulness of the application for insurance, it must do so during the first two years of the policy. After the policy has been in effect for two years, the application cannot be challenged on this basis. Section 38-63-220(d) has been interpreted as the authority to rescind a policy based upon false statements in an application discovered during the contestability period of the policy (i.e., the first two years of the policy). *See, e.g., Carroll v. Jackson National Life Insurance Company*, 307 S.C. 267, 414 S.E.2d 777 (1992) (insurer must challenge truthfulness of matters in the application during the first two years).

Based on the language of § 38-63-220(d), individual life insurance policies cannot be unilaterally rescinded. Section 38-63-220(d) provides a specific process for rescission (i.e., vacating) of the policy. According to the language in the statute, *any rescission of the life insurance policy within the two-year contestability period based upon alleged false representations contained in the insured's application must be accomplished through "proceedings to vacate a policy"* and must commence within the two-year timeframe set forth in the statute. (emphasis added). To vacate a policy means to cancel or declare it void. A letter or other notice to the insured stating that the policy has been canceled or rescinded does not qualify as a *proceeding to vacate a policy* under South Carolina law. A proceeding to vacate a policy is a judicial proceeding commenced to cancel the policy or have it declared null and void. Generally, the rescission issue may arise in an action brought by the insured on the policy, or in an action brought by the insurer to have the policy declared null and void. *See Insurer's Right to Rescind Insurance Contract for the Insured's False Statements*, 21 Am. Jur. POF 3d 565. Some insurers that have sought to rescind policies have done so through declaratory judgments and other civil actions.

Insurers are encouraged to confer with counsel about the type of proceeding necessary to vacate a life insurance policy in accordance with S.C. Code Ann. §38-63-220(d). Unilateral rescissions of life insurance policies violate South Carolina law. A violation of S.C. Code §38-63-220(d) may result in civil liability and/or disciplinary action initiated in accordance with S.C. Code Ann. § 38-2-10.

III. QUESTIONS

Any questions or concerns about this bulletin should be submitted in writing to the attention of:

David E. Belton
Senior Associate General Counsel
South Carolina Department of Insurance
1201 Main Street, Suite 1000
Columbia, SC 29202

Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.



SENIOR SAFE ACT FACT SHEET

May 23, 2019

Introduction

The Senior Safe Act became federal law on May 24, 2018.¹ The Senior Safe Act does not mandate any action by financial institutions and regulators. However, for financial institutions and certain eligible employees (discussed below), affiliated persons, and associated persons (“eligible employees”), who satisfy its requirements, the Senior Safe Act provides immunity from liability in any civil or administrative proceeding for reporting potential exploitation of a senior citizen. As an example, this immunity can be helpful when a firm wants to report potential exploitation but fears that the report could violate a privacy requirement. This Fact Sheet provides general information regarding the Senior Safe Act with the goal of educating financial institutions and employees about the benefits of the Act.²

What is the Senior Safe Act?

The Senior Safe Act protects “covered financial institutions”³ – which include investment advisers, broker-dealers, and transfer agents – and their eligible employees, from liability in any civil or administrative proceeding in instances where those employees make a report about the potential exploitation of a senior citizen (defined as not younger than 65 years) to a covered agency.⁴ The immunity established by the Senior Safe Act is provided on the condition that (1) certain employees (discussed below) receive training on how to identify and report exploitative activity against seniors before making a report, and (2) reports of suspected exploitation are made “in good faith” and “with reasonable care.” This immunity applies to eligible employees and firms, but the requirements differ slightly, as discussed below.

The inspiration for the Senior Safe Act was Maine’s SeniorSafe training program, an initiative launched in 2014 by the Maine Council on Elder Abuse Prevention that is designed to train financial professionals to detect and report cases of suspected senior financial abuse.

¹ The Senior Safe Act, which was included as Section 303 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, was signed into law on May 24, 2018.

² This document should not be construed as providing legal advice.

³ The Senior Safe Act defines the term “covered financial institution” as credit unions, depository institutions, investment advisers, broker-dealers, insurance companies, insurance agencies, and transfer agents.

⁴ The Senior Safe Act defines the term “covered agency” to include a state financial regulatory authority (including a state securities regulator or law enforcement authority and a state insurance regulator); a state or local adult protective services agency; the SEC; an SEC-registered national securities association (e.g., FINRA); a federal law enforcement agency; or any Federal agency represented in the membership of the Financial Institutions Examination Council.

What types of employees are eligible for immunity under the Senior Safe Act?

1. An employee who serves as a supervisor or in a compliance or legal function (including as a Bank Secrecy Act officer), for a covered financial institution; OR
2. A registered representative, investment adviser representative, or insurance producer affiliated or associated with a covered financial institution.

What types of employees must be trained to receive the immunity provided by the Senior Safe Act?

The Senior Safe Act does not mandate that any employees be trained. However, to qualify for the immunity provided by the law, training must be provided to and completed by the employees who are eligible for immunity (see above) and those employees who may come into contact with a senior citizen as a regular part of their professional duties or may review or approve the financial documents, records, or transactions of a senior citizen in connection with providing financial services to a senior citizen.

What are the training requirements under the Senior Safe Act?

The Senior Safe Act provides that, to receive the immunity provided by the Act, the training must: (1) instruct any individual attending the training on how to identify and report the suspected exploitation of a senior citizen internally and, as appropriate, to government officials or law enforcement authorities, including common signs that indicate the financial exploitation of a senior citizen; (2) discuss the need to protect the privacy and respect the integrity of each individual customer of the covered financial institution; and (3) be appropriate to the job responsibilities of the individual attending the training.

How soon must employees be trained to receive the immunity provided by the Senior Safe Act?

For current employees, affiliated persons, and associated persons, as soon as reasonably practical. New employees or persons who become affiliated or associated with a covered financial institution have no later than one year from the date of hire, affiliation, or association to complete the training.

What records of training must be maintained?

Records of employees who completed the training and the content of the training must be maintained by the covered financial institution and made available to a covered agency with examination authority over the covered financial institution, upon request, except that a covered financial institution shall not be required to maintain or make available such content with respect to any individual who is no longer employed by or affiliated or associated with the covered financial institution.

How do the requirements for “individual immunity” and “institutional immunity” differ?

An eligible employee who has received the training and makes a disclosure to a covered agency in good faith and with reasonable care receives individual immunity pursuant to the Senior Safe Act. A covered financial institution also receives institutional immunity when an eligible employee makes a disclosure to a covered agency and all employees have received training to the extent necessary to qualify for immunity under the Senior Safe Act.

Does the immunity provided by the Senior Safe Act allow for contacting third parties?

No, the qualified immunity established by the Senior Safe Act applies only to disclosures made by a covered financial institution or an employee of such institution to a “covered agency,” not a third party.

Where can I find additional information?

NASAA Resources:

Serve Our Seniors website (<http://serveourseniors.org>)

SEC Resources:

SEC Seniors webpage (<https://www.investor.gov/seniors>)

FINRA Resources:

FINRA’s Senior Investors webpage (<https://www.finra.org/industry/senior-investors>)

Regulatory Notice 17-11, SEC Approves Rules Relating to Financial Exploitation of Seniors (March 2017) (<https://www.finra.org/industry/notices/17-11>)

FINRA Securities Helpline for Seniors: 844-57-HELPS (844-574-3577)

FINRA Securities Helpline for Seniors webpage (<http://www.finra.org/investors/highlights/finra-security-helpline-seniors>)

Report on the FINRA Securities Helpline for Seniors (December 2015) (<http://www.finra.org/newsroom/2015/finra-releases-report-its-security-helpline-seniors>)

Protecting Seniors From Financial Exploitation (April 25, 2018) (<http://www.finra.org/investors/highlights/protecting-seniors-financial-exploitation>)

FINRA Investor Alerts (<http://www.finra.org/investors/alerts>)