



# Compliance Reference Guide

## Consumer Markets & Workforce Benefits

## Table of Contents

Forward .....	5
Purpose.....	5
Questions.....	5
Chapter 1: Anti-Money Laundering and Forms of Payment .....	6
Independent Reporting .....	6
Insurance Producer Training .....	6
Acceptable Forms of Payment.....	6
Unacceptable Forms for Payment .....	6
Money Laundering Red Flags .....	7
Marijuana-Related Business (MRB) .....	9
Chapter 2: Antitrust Concerns .....	10
Prohibited Activities .....	10
Chapter 3: Cold Calling, Telemarketing Practices, and CAN-SPAM Act.....	12
Guidelines .....	12
CAN-SPAM Act.....	13
Chapter 4: Complaints .....	15
Regulatory Requirements.....	15
Communications with the Department of Insurance.....	16
Chapter 5: Concept Sale .....	17
Chapter 6: Forgery.....	19
Chapter 7: Illustrations .....	20
Non-Variable Products: The NAIC Life Insurance Model Regulation .....	20
Non-Variable Life Products Illustration Acknowledgement (Illustration Certificate) .....	22
Variable Life Insurance Illustrations .....	22
Chapter 8: Insurance Producer Contract & Licensing .....	23
Licenses and Appointments.....	23
Fixed Annuities .....	23
Disclose Other Relationships.....	24
Disclose Basis for Compensation.....	24
Additional Duties of Financial Planners/Consultants .....	25
Other Licensing Considerations—Replacement of Individual Variable Insurance Products.....	26
Chapter 9: Insurance Producer as Trustee .....	27

Trustee’s Fiduciary Duty .....	27
Insurance Producer’s Special Expertise .....	27
Policy .....	27
Chapter 10: Meeting Your Clients’ Needs .....	29
Determining Insurance Needs and Financial Objectives .....	29
Annuity Contract Structuring.....	30
Stranger Originated life Insurance .....	30
After The Sale .....	30
Beneficiary Designations .....	30
Telephone and Electronic Requests for Annuity Transactions.....	31
Chapter 11: Privacy.....	32
Insurance Producer’s General Obligations .....	32
HIPAA Compliance .....	33
Security Breach.....	34
Chapter 12: Record Keeping.....	35
Chapter 13: Replacements .....	37
Application and Required Forms .....	38
New York Regulation 60 .....	39
Long-Term Care Coverage Replacement .....	40
Chapter 14: Retirement Sale (Life Insurance Sales) .....	41
Required Disclosures .....	41
Chapter 15: Sales Material Review and Approval .....	43
Purpose of Review and Approval .....	44
Sales Material Primer .....	44
Long-Term Care Coverage Marketing Procedures .....	44
Chapter 16: Sales, Solicitations, & Related Activities.....	46
Insurance Sales and The Laws of Foreign Nations.....	47
Sales to the Military.....	48
Trustee Purchases .....	48
Chapter 17: Seniors and Vulnerable Adults.....	50
Helping Protect Seniors and Other Vulnerable Persons from Harm.....	51
Senior Investor Considerations and the Use of Professional Designations.....	51
Chapter 18: Suitability .....	53

Federal Guidelines for Annuities and Life Insurance.....	53
State Guidelines for Annuities and Life Insurance .....	54
State Guidelines for Annuities.....	55
State Guidelines for Long Term Care.....	56
Chapter 19: Unauthorized Practice of Law.....	58
Advice on the Law .....	58
Use of Specimen Forms .....	58
Insurance Producer as Attorney.....	59
Chapter 20: Unfair Trade Practices .....	60
Unfair Financial Planning Practices .....	62
Translation Services.....	63

## Forward

This Compliance Reference Guide attempts to consolidate into one resource what we feel to be important market conduct information. Feel free to share this guide with others in your office as you feel appropriate. Information in this guide is applicable to both Pacific Life Insurance Company (PLIC) and Pacific Life & Annuity Company (PL&A) unless otherwise specified. This guide can also be viewed in its entirety by referring to our producer website.

## Purpose

The purpose of this Compliance Reference Guide is not to replace, supersede, or contradict any compliance manual or guidelines utilized by your company. Nor is it intended to give you **all** the information you need to know to conduct your affairs ethically and in compliance with **all** the laws and regulations that impact the sale of life insurance, annuities, and group insurance. Rather, this Compliance Reference Guide focuses on compliance issues which are of particular importance today and provides you with our expectations regarding these issues when you are selling Pacific Life's products. Your producer agreement with Pacific Life requires you to act in accordance with this Compliance Reference Guide.

Pacific Life refers to Pacific Life Insurance Company and its subsidiary Pacific Life & Annuity Company. Insurance products can be issued in all states, except New York, by Pacific Life Insurance Company and in all states by Pacific Life & Annuity Company. In New York, insurance products are only issued by Pacific Life & Annuity Company. Product availability and features may vary by state. Each company is solely responsible for the financial obligations accruing under the products it issues. Insurance product and rider guarantees are backed by the financial strength and claims-paying ability of the issuing company and do not protect the value of the variable investment options.

The term Contract is used in this guide to include variable, fixed annuity, non-variable life insurance, dental, vision, short- and long-term disability insurance policies and other types of insurance offered, including any riders to those policies and contracts, that may be issued by Pacific Life.

As you use and refer to this guide, be aware that although we have incorporated the most up-to-date information available, the insurance industry is constantly changing. Pacific Life sends bulletins, administrative updates and communicates information via our producer website to update information contained herein. From time-to-time, the Guide will be updated in its entirety and made available for you to review.

## Questions

Please feel free to contact the Compliance Department at [EnterpriseCompliance@PacificLife.com](mailto:EnterpriseCompliance@PacificLife.com) if you have any questions or comments about the Compliance Reference Guide.

## Chapter 1: Anti-Money Laundering and Forms of Payment

Insurance companies and their appointed insurance producers are subject to anti-money laundering (AML) regulations adopted by the United States Treasury Department and its Financial Crimes Enforcement Network (FinCEN). An insurance company's or your "willful blindness" to suspicious activity can subject the company and/or you to severe penalties including imprisonment and fines. Pacific Life has accordingly instituted an AML program which includes the guidelines set out in this chapter.

### Independent Reporting

In addition to your responses to any Home Office's requests for additional information, you have an independent legal duty to report any suspicious activity indicating possible money laundering. Our requests and your responses will be treated confidentially and cannot be shared with your client or any other involved person (such as the owner, applicant, etc.). The types of suspicious activity you must report are listed in the "Red Flags" section of this chapter. You must immediately report such suspicious activity by calling 949-219-1717.

### Insurance Producer Training

The AML regulations require insurance companies to verify that their insurance producers receive ongoing AML training. Accordingly, Pacific Life requires that producers receive AML training relevant to the types of Pacific Life products they are contracted to sell no less than every twenty-four months. If a producer only sells non-variable products that are subject to AML (i.e., insurance producers who are not registered representatives with a broker dealer), Pacific Life requires that you certify you have completed AML training every twenty-four months. If a producer is a registered representative, you are required by your Broker-Dealer to maintain current AML training.

### Acceptable Forms of Payment

As part of Pacific Life's AML program, Pacific Life established guidelines as to acceptable and unacceptable forms of payment. These guidelines apply to all payments Pacific Life receives including premium payments, loan payments, etc. **All acceptable payments must be drawn or originate from a U.S. bank.**

- Personal check
- Business check
- Cashier's check / Official check
- Temporary check – ABA and account number preprinted
- Third-party check, with a clear connection of the third party to the underlying transaction
- Wire transfer
- Money orders in a single denomination of more than \$10,000 for **inforce** payments

### Unacceptable Forms for Payment

- Cash
- Credit card (non-term life insurance products) or check drawn against a credit card account
- Traveler's checks
- Money order in single denomination of \$10,000 or less
- Personal business or cashier's check drawn on a foreign bank, even if the payment is affected through a U.S. correspondent bank
- Third-party check when there is no clear connection of the third party to the underlying transaction or a check made payable to the life insurance producer or registered representative and endorsed to PLIC

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- Wire transfer that originates from a foreign bank account
- Check made payable to the insurance producer and endorsed over to Pacific Life
- Post-dated checks
- Checks with the payee line or signature line altered, whether initialed or not
- Insurance producer's personal or business check
- Starter checks
- Home equity checks
- eChecks
- Cashier's checks, money orders, traveler's checks, or personal checks drawn on non-U.S. banks, even if the payment may be affected through a U.S. bank

Payments not meeting the above requirements will be returned to the sender.

Checks should be made payable to the issuing company: Pacific Life Insurance Company or Pacific Life & Annuity Company. Payments will be credited to the contract as of the date the issuing company receives the payment in good order. If available, the contract number should be referenced. Please note that this policy is subject to change. Visit our producer website for up-to-date information regarding acceptable forms of payment. Pacific Life reserves the right to reject any form of payment.

### Money Laundering Red Flags

The following are guidelines to watch for that *may be* indicative of suspicious activity with regard to the sale or administration of Pacific Life's products.

#### Know Your Client

- Unwilling to provide identification or personal background when applying for a contract
- Supplies inadequate, false, or suspicious identification or background information
- Presents unusual identification that cannot be independently verified
- Provides a call back number that is false or disconnected
- Refuses or is reluctant to complete an application or to otherwise provide all the required information, or the information provided is false, or suspicious in nature, or inconsistencies between application and information obtained during underwriting
- Reluctant to disclose the identity of the ultimate beneficiary
- Fails to comply with application or underwriting procedures and guidelines
- Has questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations
- Entity is reluctant or refuses to provide complete information regarding the activities or purpose of the business, its officers, or its location
- Client has difficulty describing the nature of their business or lacks general knowledge of their industry
- There appears to be no apparent relationship between the owner and the insured, annuitant, or beneficiary

#### Investment Objective Inconsistencies

- Little or no concern by the client for the performance of the contract but concern about the early termination of the contract

- Not concerned about the cost of the contract or in determining the suitability of the product to their needs
- Shows no interest in other products that may offer better returns or lower transaction costs

#### **Source of Funds**

- Attempts to fund contract with a third-party check (a check made payable to Pacific Life but drawn on the account of a third party unrelated to the client, or a check made payable to another party but endorsed to Pacific Life)
- Attempts to fund contract with a “starter check”
- Refuses to identify or fails to indicate any legitimate source for their funds and other assets or identifies a legitimate source of funds that is false, misleading or incorrect
- Source of funds is unclear or inappropriate
- Client has no record of employment but who is involved in large transactions
- Client has inflows of funds or other assets well beyond the known income or resources of the client
- Asks for exceptions from the company’s policies regarding the acceptance of cash and cash equivalents
- Client is from, or has accounts in, a country identified as a non-cooperative country or territory by the Financial Action Task Force (FATF)
- Engages in transactions, including wire transfers, to or from a country identified as a money laundering risk or bank secrecy haven
- Unusual or suspicious wire transfer especially to foreign countries

#### **Cash Equivalents (Money Orders, Traveler’s Checks, Cashier’s Checks)**

- Engages in transactions involving cash or cash equivalents or other monetary instruments that appear to be structured to avoid the \$10,000 government reporting requirements
- Attempts to make payments with cash or cash equivalents or with checks drawn on different accounts or checks drawn on an account other than their own
- Submits groups of sequentially numbered money orders/traveler’s checks/cashier’s checks or multiple money orders/traveler’s checks/cashier’s checks purchased from different institutions on the same date or different dates

#### **Unusual Contract Activity (insurance producer may or may not have knowledge of these events)**

- Purchases a single premium contract to prepay the premiums and thereafter borrow the maximum cash value or use the contract as collateral for a loan
- Seeks to cancel contract during the free look period or prior to the maturity without regard for surrender charges
- Borrowing of the maximum amount available soon after purchase of the contract
- Pays premium with wired funds followed by a request for immediate disbursement to a third party via check or wire transfer
- Client has multiple contracts under a single name or multiple names, with a large number of inter-account or third-party transfers
- Unexplained or sudden extensive wire activity, especially in contracts that had little or no previous activity
- The transfer of the benefit of an insurance product to an apparently unrelated third party

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## Marijuana-Related Business (MRB)

Many states and the District of Columbia have legalized certain marijuana-related activities. Despite these state laws, the Controlled Substances Act makes it illegal under federal law to manufacture, sell, and/or distribute marijuana.

The Financial Crimes Enforcement Network (“FinCEN”) has issued guidance to clarify the expectations under the Bank Secrecy Act for financial institutions which provide services to marijuana-related businesses. The FinCEN guidance requires financial institutions, including insurance companies, to assess the risks associated with opening accounts or issuing contracts to individuals or companies associated with the manufacturing, sale or distribution of marijuana. The guidance further requires financial institutions to file Suspicious Activity Reports (“SARs”) for any customer involved in an MRB because federal law prohibits the distribution and sale of marijuana and, thus, views such activity as inherently involving funds derived from illegal activity. Marijuana continues to be illegal to manufacture, import, possess, or distribute under U.S. federal law.

Because it is illegal under federal law to manufacture, sell, and/or distribute marijuana, and proceeds from an MRB is subject to Anti-Money Laundering laws, Pacific Life will not knowingly issue contracts or open accounts for an individual or business involved in the manufacturing, sale, or distribution of marijuana. Insurance producers must notify Pacific Life if a customer who has submitted an application to Pacific Life is involved in marijuana-related businesses (whether for medicinal or recreational purposes). If, after a contract is issued or opened, you discover that a customer is involved in marijuana-related businesses, please contact Pacific Life at (949) 219-1717.

You must also comply with your company’s AML requirements, as applicable. You are also required to complete training on how to recognize and deal with money laundering issues. In accordance with FINRA rules, your Broker-Dealer has implemented a training program to assist you in the fulfillment of this training requirement. Insurance producers who are not registered representatives associated with a FINRA member Broker-Dealer must complete AML training every two years and provide Pacific Life with documentation of AML training completion.

For additional information about AML and suspicious activity, access the Financial Crimes Enforcement Network at [www.fincen.gov](http://www.fincen.gov). As the federal and state legislative environment regarding marijuana continues to evolve, Pacific Life will monitor the potential impacts to our business and update you regarding our position accordingly.

## Chapter 2: Antitrust Concerns

Whenever you are meeting or communicating with competitors or representatives of competitors, it is important to consider the antitrust implications of your communications. Generally, you should not make, or have any discussions of, any agreements regarding the pricing or the design of products except within a legislative or regulatory context.

### Prohibited Activities

#### **Price-Fixing**

Price fixing is any type of agreement (express or implied, formal, or informal) between two or more competitors which inhibits price competition.

Arrangements which in any way interfere with the operation of the free market process of arriving at product price are illegal, even if the product price is lowered as a result. Among the types of agreements which have been determined to constitute price-fixing are, among other things, arrangements between competitors to maintain existing prices even though the prices differ, arrangements to increase or decrease prices, and the use of common sales agents where the agent is permitted to determine the price at which products of two or more competitors are sold.

In the context of insurance, the term "prices" may include premiums or any basic part of a premium formula, dividends, classifications, and other ratings; commission rates; surrender charges; also interest rates on reserves, loans, prepaid premiums, and settlement options. In the context of investment operations, included in "prices" may be interest rates; finder's fees; amortization terms; rental charges; periods of maturity; commissions; and appraisal values. While price uniformity or approximate uniformity is not proof of a price-fixing arrangement and may, indeed, be the product of pure competition, it is suspect if it emerges after price discussions between competitors at a trade association meeting or informal meeting.

For these reasons, discussions of premiums or rates, pricing or rating uniformity or stability, product costs of individual insurers from which rating conclusions may be made, and discussions of profit levels of individual insurers which may suggest pricing decisions should be avoided.

#### **Market Allocations**

Market allocation is the division of clients or markets and limitations on volume of production. The courts have consistently condemned arrangements between two or more competitors to divide clients, allocate territories or markets, restrict sales volume, or in any way agree to control their respective output of goods or services.

#### **Boycotts or Concerted Refusals to Deal**

An agreement or understanding among competitors to refuse to deal with (boycott) any third party is unlawful and must be avoided. The third party may be a client or a competitor. Any time two or more competitors decide to take joint action regarding a third party, the possibility of a boycott violation exists. Moreover, one seller may not agree, directly or indirectly, with one or more of its independent distributors that the seller or distributor will refuse to deal with others desiring to purchase the product for sale.

Some examples of illegal boycotts might be agreements between several companies not to accept business from a certain insurance producer, applicant or class of applicants, or securities from a particular dealer or type of dealer, or to discontinue a certain type of policy.

## **Discriminatory Pricing**

Discriminatory pricing occurs when a buyer pays a price that is different than the price paid by another buyer for an identical product or service. This is prohibited if the effect of the discrimination is to substantially lessen or injure competition (except where it is done because of differences in costs incurred or in good faith to meet an equally low price of a competitor).

## **Unreasonable Restraint of Trade**

Contracts designed to eliminate or stifle competition, effect a monopoly, artificially maintain prices, or otherwise hamper or obstruct the course of trade and commerce as it would be carried on if left to the control of natural economic forces are prohibited as Unreasonable Restraint of Trade. These are illegal restraints, interfering with free competition between business or commercial transactions which tend to restrict production, affect prices, or otherwise control the market to the detriment of purchasers or consumers of goods and services.

## **Tying and Bundling**

Tying or bundling is a prohibited practice in which a person agrees to sell one product only on the condition that the buyer also purchases another product.

## **Exclusive Dealing**

Agreements to deal exclusively with one seller or buyer are generally illegal.

## **Examples of Prohibited Agreements**

For purposes of this chapter, the following is an illustrative list of types of agreements (whether expressed or implied, formal or informal, written or oral) that should be avoided:

- Marketing strategy
- Actuarial assumptions or design features
- Premium rates
- Interest rates
- Loss or expense ratios
- Claims settlement practices
- Costs or profits
- Dividends or excess interest level
- Policy forms, limits, coverages, deductibles, etc.
- Sales volume
- Prepayment or installment premium practices
- Market share
- Decisions to quote or not to quote
- Client or supplier classification or selection
- Sales territory or distribution methods
- Terms of insurance producers' agreements, commissions, profit-sharing, or expense allowances
- Blacklisting of insurance producers

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## Chapter 3: Cold Calling, Telemarketing Practices, and CAN-SPAM Act

The Telephone Consumer Protection Act ("TCPA") granted the Federal Communications Commission ("FCC") the authority to develop rules related to telemarketing and the use of automated telephone dialers. Specifically, the TCPA directed the FCC to initiate rulemaking "concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telemarketing calls to which they object." Further, the TCPA explicitly included the authority to create "a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telemarketing calls." To that end, the FCC has issued regulations ("Do-Not-Call rules") that establish a national "Do-Not-Call" registry. These regulations impose financial penalties on commercial telemarketers for calling phone numbers on the Do-Not-Call registry. The FCC has expanded coverage of the national Do-Not-Call registry to include banks, insurance companies, credit unions, savings associations, and other financial institutions. Further, the Federal Trade Commission's ("FTC") calling regulations parallel the FCC regulations and apply to all other business entities, including third parties acting as agent or on behalf of a financial institution. **NOTE: For purposes of this chapter, text messages are subject to the same or similar rules as telephone calls, telemarketing, and electronic messages.**

This section applies to insurance producers engaging in telemarketing activities and to make clear Pacific Life's expectations when placing telemarketing calls. Insurance producers are expected to adhere to the following requirements. The information does not apply to telephone calls placed between a telemarketer and any business phone number. Agencies employing insurance producers approved to engage in telemarketing are responsible for maintaining contact information on all current and former employees directly involved in telephone sales or solicitations, and for ensuring proper procedures and training are communicated. Further information on the Federal Telemarketing regulations and DNC registries can be found at: [www.ftc.gov](http://www.ftc.gov) and <https://www.telemarketing.donotcall.gov>.

### Definitions

- *Telemarketing* – The initiation of a telephone call or message for the purpose of encouraging the purchase of goods or services, which is transmitted to any person. This definition further includes fax machine transmissions.
- *Telemarketer* – The person or entity that initiates a telephone call or message to a customer in connection with telemarketing.

### Guidelines

Insurance Producers are prohibited from:

- Identifying yourself or office as representatives of Pacific Life when placing a telemarketing call.
- Placing any telemarketing call to any residence listed on the federal, state, or entity-specific DNC registry without prior written consent.
- Placing any telemarketing call without maintaining proper access to the federal or state DNC and paying the appropriate fees. Check with your office to confirm your obligations in subscribing to any registry.
- Placing any telemarketing call without maintaining a sufficient bond, letter of credit, or certificate of deposit in any amount for any time period required by state or federal law.
- Using any DNC database for any reason other than preventing telemarketing calls.
- Failing to transmit caller identification information when placing a call.

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- Abandoning a call after a customer answers the phone.
- Initiating any outbound telephone call that delivers a prerecorded message.
- Sending unsolicited fax machine communications.
- Engaging in misleading communications or otherwise abusive or harassing conduct.

Insurance Producers are responsible for, among other things, the following:

- To register as a telemarketer in states required, and to maintain appropriate certificates of registration.
- For verifying whether telephone numbers are listed on the federal, state, or entity-specific DNC registry.
- For obtaining prior written consent before calling any customer whose number is on the federal, state, or entity-specific DNC registry.
- For updating call list(s) against the DNC registries at least once every 31 days, and as otherwise described in state and federal law and applicable office procedures.
- Maintaining an individual and/or office DNC list of consumers who have asked not to receive calls placed by, or on behalf of, a particular individual and/or office.
- To ensure all telephone calls placed to a residence are placed between 8:00 a.m. and 9:00 p.m. local time at the called person's location.
- To identify your name, office, and that the purpose of your call is to promote financial/insurance products or services.
- For maintaining required records.
- To oversee the conduct and licensing status of any person engaging in telemarketing activity on your behalf, including the retention of any records maintained on your behalf by any third-party vendor.

## CAN-SPAM Act

The CAN-SPAM Act is a federal law designed to reduce unwanted and/or malicious commercial electronic messages from circulation. It allows people to unsubscribe from your email list. These requirements apply to any commercial electronic message promoting Pacific Life or its services, whether or not a recipient provides affirmative consent ("opt-in") to receive such communications, maintains an existing personal or business relationship, or whether the message is sent in bulk. The below provided requirements do not apply to transactions-based or relationship-based electronic mail messages.

### Definition

- *Commercial messaging*: any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service, including email that promotes content on a commercial website.
- *Transactional or relationship messaging*: any electronic mail message which facilitates an already agreed-upon transaction or updates a client about an ongoing transaction.

### Requirements

Insurance producers are required to ensure the following requirements are met when engaging in any electronic commercial messaging. You must ensure your messages comply with all key provisions of the law including:

- The email address displayed in the "from" field is functioning, and accurately identifies the sender.
- Your valid physical office address is included within each communication.

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- A subject heading appropriate to the purpose and content of the communication is included.
- A clear and conspicuous notice of a recipient's right to opt-out of future communications is provided within the content, even if a recipient initially opts in to receive commercial messaging. The notice must make clear how a recipient may opt-out or unsubscribe to future communications. Senders are prohibited from sending commercial messaging to a recipient after receipt of an opt-out request.
- You are not permitted to charge a fee, require the recipient to give you any personally identifying information beyond an email address, or make the recipient take any step other than sending a reply email or visiting a single page on an internet website as a condition for honoring an opt-out request.
- Insurance producers are not permitted to send commercial messages to email addresses obtained through address harvesting or dictionary attacks.
- Client opt-in requests should always be requested in writing and maintained within the client file and are required for any recipient that has opted out of receiving commercial messages.

The following is required if a recipient has not opted in to receive commercial messages:

- Clear and conspicuous identification that the message is an advertisement or solicitation.

It is your responsibility to comply with these requirements, along with applicable company procedures to ensure full compliance.

## Chapter 4: Complaints

A customer complaint occurs whenever a client primarily expresses a grievance relating to an insurance product from Pacific Life Insurance Company or Pacific Life & Annuity Company or its sale. The communication may be written or verbal and may come from the customer, their attorney, or any federal or state regulatory agency.

### Service Issue vs. Complaint

In some instances, it may be difficult to distinguish when an inquiry or service issue becomes a customer complaint. The following definitions explain the difference between a “service issue” and a “complaint.”

- *Complaint:* When a customer, his/her attorney, or the Department of Insurance expresses a grievance such as an item listed in the complaint category below.
- *Service Issue:* When a customer requests clarification regarding their contract or asks a question that can be answered with factual or procedural information, and you feel an issue can be resolved quickly and easily to the satisfaction of the person inquiring, you can handle the request without necessarily involving the Home Office. Be cautious that what can begin as a service issue can at any time elevate to a complaint.

### Notify Us Immediately

A customer who expresses a complaint must be taken seriously. Complaints must be handled with the utmost care with consideration for a resolution, if applicable, acceptable to the customer. Our Consumer Affairs team in Compliance is specifically devoted to addressing complaints. If you receive any written or verbal communication where a complaint is expressed, Pacific Life should **immediately** be contacted at [OGC\\_EC\\_Complaint\\_Handling@PacificLife.com](mailto:OGC_EC_Complaint_Handling@PacificLife.com).

Registered representatives associated with FINRA member Broker-Dealer firms are also reminded to follow their Broker-Dealer’s complaint-handling procedures. Broker-Dealers and their registered representatives are reminded of the importance of **immediately notifying Pacific Life** whenever they receive a customer complaint.

Please make the Home Office aware of service issues raised by our customers so that we can learn from the issues they raise. Your added feedback can also provide invaluable information to us.

### Regulatory Requirements

Regulators require insurers to maintain a complete record or log of all the complaints received. This record or log must indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. States have various guidelines regarding the time permitted to respond to a customer complaint.

### Categories of Customer Complaints

We need to be aware of the questions and concerns of owners that should alert you to a potentially serious problem. Some key categories of customer complaints are identified below:

- Misappropriation or embezzlement of funds
- Fraud or forgery
- Inappropriate or improper replacement (i.e., twisting or churning)
- Insurance sold is not suitable or appropriate

- Misrepresentation
- Poor Service

### Examples of Customer Complaints

Recognizing a customer complaint is not always obvious and may vary by the specific facts, circumstances, and phrasing of the complaint. Below are examples to assist you with recognizing the receipt of a customer complaints in which the complainant:

- Thought they purchased an “investment,” without any insurance charges, such as a Private Pension and/or Life Insurance Retirement Plan (“LIRP”).
- Did not know they were purchasing an insurance product.
- Never received the insurance product’s contract.
- Was never aware of notable differences corresponding to their replacement (i.e., surrender charges, features, other costs, etc.).
- Thought they were guaranteed benefits and features not available to their insurance product (i.e., a paid-up Whole Life policy).
- Uses language such as, “you don’t have the right to do \_\_\_\_ without my permission.”
- Have not been able to reach their producer.
- Requests a rescission, full refund of premium, or money back (outside the free-look period).
- Says they were going to contact an attorney or the Department of Insurance.

### Communications with the Department of Insurance

When the Department of Insurance (DOI) receives a customer complaint, they may contact you directly and ask that you respond to the complaint. Unless directed otherwise by the state’s DOI, **please advise our Home Office of all correspondence received from the DOI** relating to Pacific Life products and forward a draft copy of any communications to Consumer Affairs at [OGC\\_EC\\_Complaint\\_Handling@PacificLife.com](mailto:OGC_EC_Complaint_Handling@PacificLife.com) for review **prior to forwarding the response to the DOI**.

Similarly, if you receive a complaint filed with FINRA or participate in an arbitration hearing regarding a Pacific Life contract, please inform at [OGC\\_EC\\_Complaint\\_Handling@PacificLife.com](mailto:OGC_EC_Complaint_Handling@PacificLife.com) in addition to your Broker-Dealer.

Please respond promptly to any requests for a written statement from Consumer Affairs.



## Chapter 5: Concept Sale

Many insurance sales are part of, or are the result of, a sales concept that relates to a particular financial, tax, or investment strategy. Any materials you create or present to your clients for such a sales concept must follow the guidelines presented throughout this guide including but not limited to the “Sales Material Review,” “Illustrations,” “Insurance Producer Contract & Licensing,” “Unfair Trade Practices,” and “Unauthorized Practice of Law” chapters.

More particularly, you have a duty to make full, fair, and prompt disclosure of all material facts within your knowledge that might impact your client’s rights, interests, or their actions relative to the sales concept presented or the insurance products purchased to support that concept.

### **It’s Insurance Sales Material**

A sales concept presentation coupled with an insurance sale is considered insurance sales material under state advertising laws. Therefore, any sales concept created to sell a Pacific Life insurance product must be submitted for review and approval.

### **Concept Driven Illustrations**

For a life insurance product to generate sufficient funds to support the sales concept illustrated, such supporting illustrations:

- must not be based on illustrations and financial models that are inaccurate, unreliable, and unlikely to be achieved.
- must not be based on unreasonable, unrealistic, and inappropriate assumptions.
- must adequately illustrate the true risks of funding the sales concept with insurance contracts, especially if the concept is dependent on or sensitive to mortality experience.

### **Assumptions**

When presenting sales concept illustrations or schedules along with insurance product illustrations, it is important to clearly identify the sources and uses of cash (i.e., where the dollars are coming from and where they are going). It is important to clearly label any combined schedules or tables (and also follow sales material and illustration guidelines).

You must use appropriate mortality tables and assumptions when illustrating sales concepts that are dependent upon or sensitive to mortality experience. Further, you should disclose the rationale for any mortality assumptions utilized and include a reference to the mortality table you are using (and any disclosures that come with that table must be included).

Interest rates or other rates of return in sales concepts used to support an insurance purchase must be supportable given current market rates. You should have in your files documentation supporting any interest rate assumption used.

### **After the Sale**

Reviewing your clients’ contracts and the underlying sales concepts routinely is an important part of helping your clients continue to meet their insurance needs and financial objectives after the sale. There are various components to ongoing client reviews including actual contract performance compared to original illustrations,

insurance producer recommendations concerning coverage increases, decreases, changes in premium amounts or payment method and changes in separate account allocations. Furthermore, it is your responsibility to monitor, manage, and service the underlying sales concept and contract to ensure your client's goals and your representations of concept/contract performance are being met. In your review, it is important to update or provide new sales concept materials concerning how recent events, such as proposed or anticipated tax law changes or dramatic changes in the market, would affect the sales concept originally presented, as well as the underlying contract purchased. Accordingly, you should develop a procedure to ensure that client information is kept current and is available for review at least annually. This might be done by either letter or conference, or by use of a fact finder. If done via conference, whether in person or by telephone, remember to make notes of your discussion to evidence your diligent ongoing review and service to your clients.

## Chapter 6: Forgery

Forgery is committed when an insurance producer, field office or home office employee fills in the blanks or changes information on an application after it has been signed by the insured or applicant, without having it initialed by the original signing party. Even if the applicant or insured/annuitant wants to authorize you to sign on his behalf, you cannot. It is beyond your authority to do so, even with permission and even if that permission is in writing.

### Handling incomplete or unsigned applications

The application must be returned to the applicant or insured/annuitant to provide the missing information and the applicant or insured must initial and date any changes they make to the application.

Everyone involved in the completion of the application must record answers with complete detail, and every line on the application should be completed unless the question is not applicable. Use ink and avoid dashes, blanks, and ditto marks which are considered unacceptable answers. If changes to the application are required, do not white out information. Have the change initialed by the applicant or insured/annuitant as appropriate, including the date next to the initials. If you make seven or more changes, even if properly initialed, complete a new application.

If you realize an application is not completed correctly, and you will not be able to meet again with the applicant or insured soon to make and initial the necessary changes, you must not mark or alter the application in any way outside the presence of the applicant or insured/annuitant once it has been signed by them. The appropriate course of action is to submit the application as is, with a note specifying the questions, answers, or information on the application that need to be corrected or completed. New Business will attach an amendment to the contract at issue which, as a delivery requirement, must be signed by all parties who signed the original application.

Here's a list of some of the things you should not do:

- Never have applicants or insureds sign blank forms.
- The application must be completed before the applicant and insured sign the application (do not leave questions blank to fill in when you return to the office or instruct your staff to fill in the blanks later).
- Do not, for any reason, sign an applicant's name or insert their initials on any form.
- Do not enter false information on an application.
- Do not alter or modify an application or contract document.

## Chapter 7: Illustrations

### Non-Variable Products: The NAIC Life Insurance Model Regulation

In December 1995, the National Association of Insurance Commissioners (NAIC) adopted a Life Insurance Illustration Model Regulation to address abuses and to prescribe standards for the industry. The goal of this Model regulation is to put requirements in place to ensure that life insurance illustrations: 1) educate our clients about the important features of the products they buy; and (2) are prepared in an actuarially sound manner. The Model does not apply to all life insurance – it specifically excludes variable life, annuities, credit life and policies with illustrated death benefits less than \$10,000.

#### What is an Illustration?

The Model defines an illustration as: a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

- *Basic Illustration*: a ledger or proposal used in the sale of life insurance that shows both guaranteed and non-guaranteed elements.
- *Supplemental Illustration*: an illustration furnished in addition to a basic illustration that meets the applicable requirements of this regulation, and that may be presented in a format differing from the basic illustration but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.
- *In Force Illustration*: an illustration depicting the policy performance furnished at any time after the policy has been in force for one year or more.

#### General Requirements

Pacific Life's non-variable individual life insurance products (except its term life insurance products) must be sold with a compliant illustration signed by the insurance producer and the applicant, where required by law. In order to ensure that your sales illustrations are compliant, the following are general requirements you should take particular notice of.

#### The Basic Illustration

A "Basic Illustration" must be presented whenever an application is taken. There is a prescribed format for this which includes a narrative summary of the policy and rider benefits. The Basic Illustration must also include (for selected policy years) values on both a guaranteed scale and an "intermediate" scale in addition to values on the illustrated scale. Both the insurance producer and the applicant are required to sign the Basic Illustration and submit it to the Home Office with the application. If the policy application (or the policy as issued) is not consistent with the illustration, a revised illustration must be signed by the insurance producer and the applicant no later than when the contract is delivered.

#### Supplemental Illustrations

Many of our insurance producers prepare customized presentations for their clients. These presentations often include values taken from a Basic Illustration. The required format of the Basic Illustration is rigidly defined in the Model and doesn't allow for presentation of sales concepts. The Model does, however, allow the use of Supplemental Illustrations. Supplemental Illustrations may provide greater flexibility for presenting sales concepts, but there are some restrictions that must be observed. If you present illustrated values in this way, any material that you present to a client that depicts future non-guaranteed values for an insurance product is

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considered a “Supplemental Illustration” and subject to the regulation. It is also sales material and must be submitted to Pacific Life’s Compliance area for approval. A Supplemental Illustration must be presented with (or preceded by) a compliant Basic Illustration and reflect the same premiums as the Basic Illustration with an illustrated scale that is no more favorable than the one used in the Basic Illustration.

The Model defines an “illustration” very broadly as any presentation or depiction that includes non-guaranteed elements of a policy over a period of years. This can include providing a single number such as a 20<sup>th</sup> year cash value in a letter, Supplemental Illustrations, and/or any sales material which can be classified as a Supplemental Illustration.

### **Authorized Practices**

- Illustrations presented to a client must be produced only from the current version of our illustration software. Use the Navigator Online option on our producer website, check in the Navigator desktop application by selecting Help, Check for Updates, or by calling the Software Distribution desk at (800) 800-7681, extension 8999 to order current software.
- Ensure the illustration is run for presentation in the appropriate state.
- Check that the application to be submitted is consistent with the illustration.
- Present a complete illustration to the client. No pages that are part of the illustration should be removed or altered.
- The illustration must be signed by the applicant and insurance producer and dated on or before the date of the application, if required by the state selected for the presentation.
- Leave a copy of the illustration with your client, send one in with the application, and retain a copy in your records.
- If an updated “as issued” illustration is sent out for delivery with the policy, also keep a copy of it in your records.
- The client’s full name and insurance producer’s full name and address must be used.

### **Vanishing Premiums**

The NAIC Life Insurance Illustration Model Regulation and many states’ laws prohibit the use of the terms “vanishing premium” or “vanishing payments.” The “vanishing premium” concept refers to an illustration in which a policy will be self-supporting or “paid-up” after a limited number of premiums are paid, based on current, non-guaranteed crediting rates and mortality costs. This concept assumes that the otherwise-required premium payments will be offset by assumed policy cash values. However, because this concept is based upon non-guaranteed assumptions, the “vanish” itself is not guaranteed. The more appropriate term to be used for this concept is “suspended premium.”

During the sale of insurance where the “suspended premium” concept is illustrated, you must make sure that your clients understand that premium payments are not guaranteed to remain suspended indefinitely as the illustration may show. If actual performance is not as favorable as illustrated, the client will have to make premium payments to support the illustrated death benefit.

Personalized sales material created and used to illustrate, discuss, or otherwise demonstrate a suspension of premium must include a disclosure that additional out-of-pocket premium payments may be required.

As with any insurance policy, it is your responsibility to continually re-evaluate the needs of your clients and their current situation. Once an insurance policy sold on the basis of the “suspension of premium” concept is in

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force, there are continuing best business practices that should be followed to keep the client informed of any possible changes to the illustrated premium pattern.

### Non-Variable Life Products Illustration Acknowledgement (Illustration Certificate)

In the case where no illustration is used by an insurance producer or if the policy applied for is other than illustrated, the NAIC Model and state regulations include a provision which allows for the use of a certificate, which is included in our application, signed by the applicant and the insurance producer.

This certificate acknowledges that either no illustration was used in the sale of the insurance policy (not applicable for Michigan sales), or an illustration was used, but does not represent the policy applied for. *(Note: In Pennsylvania, an illustration representing the policy applied for must be provided prior to the signing of an application).* The certificate further acknowledges that a signed Basic Illustration representing the policy as issued will be provided no later than at the time of policy delivery.

### Variable Life Insurance Illustrations

Although there is no requirement that you utilize an illustration in the sale of variable insurance, we strongly recommend you do so. Together with the prospectus, a complete illustration will provide an applicant with the information necessary to determine if the product meets their insurable needs and financial objectives. Our Variable Life Insurance Disclosure Form, which is included in the illustration, is a new business requirement and evidences your disclosure to the applicant of important information about guaranteed vs. non-guaranteed policy provisions.

## Chapter 8: Insurance Producer Contract & Licensing

### Licenses and Appointments

Each state requires insurance producers who transact insurance business within its jurisdiction to obtain a license from that state. You must be licensed to sell insurance in your resident state and every other state in which you engage in sales activities. Once you begin the application process, you should complete all remaining parts of the transaction in that same state. For example, even where solicitation has taken place in a number of states (in each of which you were duly licensed and, if the state requires, appointed), when you and your client finally sit down to execute the application in California, all future new business-related forms should be signed, and the contract should be delivered in California. Further, you may be required to be appointed by the insurer issuing the product to be sold in that state prior to solicitation. For example, in certain states, you must be appointed by a carrier to sell that carrier's insurance contracts in the state or states in which the contract will be solicited, applied for and delivered, in addition to being insurance licensed.

You must also complete and satisfy any applicable state training requirements. Continuing education is required in order to maintain your resident state license, and many states require producers to complete training on certain categories of insurance products or on various market conduct subjects, e.g., long term care and annuities. The training requirements vary by state and Pacific Life may require the completion of such training courses as a precondition to selling one or more of its products. If such training is mandated, you must be able to provide evidence of completion upon request. It is your personal responsibility to comply with all applicable training and continuing education requirements that apply to you. You must also comply with any records retention requirements regarding documentation associated with the completion of such training.

In addition to state requirements, if you sell variable life insurance or annuity contracts, you must also satisfy federal securities laws. To sell variable insurance products, you must pass appropriate qualifying exams through the Financial Industry Regulatory Authority (FINRA), which operates subject to Securities and Exchange Commission (SEC) oversight. Also, you must be a registered representative of a Broker-Dealer that has a selling agreement with Pacific Select Distributors, LLC. (PSD) and the appropriate insurer. Further, you may need to be registered to sell securities in the applicant's state of residence. Please consult your Broker-Dealer for any additional licensing/registration requirements. Your appointment will be effective when approved by Pacific Life and acknowledged by the state and confirmation of such is received by us. Processing time may vary by state; check with them before submitting business.

### Fixed Annuities

Pacific Life generally sells its fixed annuities through registered representatives who are securities and state licensed and appointed with the company. Subject to certain requirements, fixed annuities may also be sold by insurance producers who are not registered representatives but are state licensed to sell insurance and appointed by Pacific Life Insurance Company and/or Pacific Life & Annuity Company.

Insurance producers who wish to write fixed annuities and who are not associated with a FINRA member Broker-Dealer are subject to Pacific Life's Non-Variable Producer Agreement and appointment requirements, including submission of an Appointment Data Sheet.

### Disclosures

As an insurance producer, it is necessary that you disclose that you are acting as an insurance salesperson. This is particularly important when you are providing insurance services along with other services, such as financial, executive compensation, estate, or retirement planning services.

In soliciting insurance, you cannot utilize trade names that are misleading or deceptive as to both the transaction that is taking place and the true identity of yourself as the insurance producer or agency engaged in selling insurance products. An advertisement or representation, whether written or oral, should not use a trade name, an insurance group designation, or the name of an agency, which has the capacity or tendency to mislead or deceive as to the identity of you or your agency and the products you sell.

### Disclose Other Relationships

As an insurance producer, it is your responsibility to disclose all relevant business relationships to your clients prior to their purchase of insurance products. For example, you should disclose your relationships to parties that will directly or indirectly profit from the sale. Similarly, you should disclose your relationships to parties that will directly or indirectly compensate you for the sale. Such arrangements can be deemed to create conflicts of interest between you and your client and must be disclosed.

On occasion, at your request, a Pacific Life employee may accompany you to a client meeting. It should be clear to your client that the employee's sole purpose in attending is to offer you product or concept-specific expertise and that the employee is not involved with sales activities. You are acting as their insurance producer and are solely responsible for ensuring that any recommendation meets their insurance needs and financial objectives. In New York, disclosures describing these relationships are required to be provided to your client prior to the time of application.

Sales material used with a client in Arkansas and California must specifically identify you as an insurance producer. This means that, in those states, your materials must include your name and state insurance license number.

### Disclose Basis for Compensation

Insurance commissions, overrides, life insurance producer loans, reinsurance arrangements, and other compensation arrangements may be perceived as powerful incentives for you to promote and sell a given insurance product in lieu of possibly a more suitable investment or insurance alternative. Such compensation may be the basis for claims that you are acting in your own best interest, to the detriment of your client.

Disclosing how you will be compensated in an insurance transaction provides your client with the opportunity to engage in whatever additional due diligence is deemed necessary concerning the product recommended versus others available from your competitors. It may also trigger a more detailed analysis of the mechanics, costs and feasibility of the proposed sales concepts and products, which will help ensure a stronger and more lasting sale.

In all insurance sales situations, it is recommended that you provide a disclosure document to your clients that accurately states and identifies:

- the basis for fees, commissions, or compensation.
- the company or firm supplying the products you offer or sell.
- the company or firm paying the fee, commission, or compensation or that is otherwise profiting from the sale.



- licenses you hold.
- other financial products you are authorized to sell.

Some states have adopted legislation that requires you to disclose *the amount of compensation* under certain circumstances, including where you receive compensation from the client for the placement of insurance or where you “represent the client with respect to that placement.”

### Additional Duties of Financial Planners/Consultants

If you indicate on advertisements, business cards, signs, circulars, websites, letterheads, or in any other manner that you are a "financial planner," "financial counselor," "financial adviser," "investment counselor," "estate planner," "investment adviser," "financial consultant," "executive benefits consultant" or any other similar designation or title or combination thereof, or any other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax, or trust and estate matters, you are considered to be representing yourself as engaged in the business of financial planning. You should clearly disclose that you are also engaged in the sale of insurance products.

In the case that you are only engaged in the sale of insurance products, you cannot represent yourself to the public as a financial planner or consultant. If you hold yourself out to the public as a financial planner or consultant, you have a fiduciary duty to persons for whom services were performed for compensation and are subject to specific state laws and regulations.

If you are an insurance producer that is also engaged in the business of financial planning as described above, you are required to provide a written disclosure document to each of your clients. The document should be signed by each client in advance of the performance of the services to be provided, and a copy should be left with your client.

The disclosure requirement may be met by including it in any disclosure required by other federal or state securities or insurance law. You must retain a copy of the agreement for not less than three (3) years after completion of services. It is recommended that the agreement is maintained thereafter if the client remains a client. Sample language to include in the disclosure document (**required in Minnesota**):

- “My Compensation may be based on the following:
  - commissions generated from the products I sell you,
  - fees, or
  - a combination of (a) and (b)”
- “I am authorized to offer or sell products and/or services issued by or through the following firm(s): [List].”
- “The products will be traded, distributed, or placed through the clearing/trading firm(s) of: [List].”
- “I am licensed in [name of state] as a(n):
  - insurance producer,
  - securities professional or broker dealer,
  - real estate broker or salesperson,
  - investment advisor”
- “The license(s) entitles me to offer and sell the following products and/or services:
  - securities, specifically the following: [List],
  - real property,
  - insurance,

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- other: [List].”

### Other Licensing Considerations—Replacement of Individual Variable Insurance Products

If you are not licensed to sell variable products, it is your responsibility to ensure you comply with the requirements of state insurance law if you recommend the replacement of an individual variable insurance product. Producers who are not licensed to sell variable products in Arkansas, Iowa, Tennessee, Utah, and Vermont are prohibited from recommending the replacement of a variable insurance product. Other states may adopt a similar prohibition and producers are encouraged to review state insurance regulator websites for specific information, and our producer website for our communication(s) of such prohibitions.

## Chapter 9: Insurance Producer as Trustee

Clients who create trusts to purchase insurance products occasionally request their insurance producer to serve as trustee of the trust. Clients do this at the time of application, or as inforce request after the contract is delivered. This raises the question of whether you or your associates or affiliates, can serve as trustee.

### Trustee's Fiduciary Duty

All trustees, regardless of their relationship to the client or their sophistication in trust administration, are fiduciaries. As such, they owe fiduciary duties to the trust beneficiaries. A fiduciary duty is the highest standard of care imposed under the law, and a trustee is expected to have undivided loyalty to the trust beneficiaries.

The trustee is prohibited from placing themselves in a situation that *may* cause a "conflict of interest." A conflict of interest may exist when the trustee *may* directly or indirectly benefit from carrying out their official trustee duties (regardless of whether they actually benefit). The trustee is required to avoid conflicts of interest because, even if they are acting in good faith, the trustee's personal interests may cloud their judgment in carrying out their duties as trustee.

The trustee is also prohibited from "self-dealing." Self-dealing occurs when the trustee engages in conduct or activities for acts in their own interest rather than for the interest of the beneficiaries. In the case of an insurance producer serving as trustee, self-dealing includes, but is not limited to, the receipt of commissions on the sale of life insurance to the trust. Generally, when the trustee engages in self-dealing, the beneficiaries need not prove fraud or bad faith in order to establish trustee liability, and no excuse can be offered by the trustee to justify the transaction. It's important to note that even the affirmative consent or approval of the individual who created the trust would not excuse the trustee from self-dealing because the trustee's duties are to the trust beneficiaries – and not the individual who created the trust.

### Insurance Producer's Special Expertise

Aside from the conflict of interest and self-dealing issues discussed above, an insurance producer who serves as trustee has particular liability exposure even without profit from commissions. Generally, insurance producers are not trained in trust administration and may be unfamiliar with the language used in trust documents and state statutes that govern trusts (such as the "Uniform Prudent Investor Act" that has been adopted by many states). Despite this lack of knowledge or familiarity, insurance producers may be held to an even higher standard of care than typical trustees based on the facts and circumstances. This is because any trustee possessing special skills/expertise that are not generally possessed by trustees has a duty to use their skills/expertise when administering the terms of the trust. As a result, the trustee with special skills/expertise may be held liable for any loss resulting from a failure to do so.

### Policy

Pacific Life does not permit an insurance producer to serve as trustee unless they are a close family member of the insured, such as a brother or sister. This applies even if you hold an additional professional license (such as an attorney or CPA). Similarly, Pacific Life strongly discourages insurance producers or their family members from becoming owners or beneficiaries of contracts that they sell or service, even if the producer can show an insurable interest in the insured. Failure to comply with Pacific Life's guidelines may result in the termination of your producer contract with Pacific life.

Insurance producers who do not qualify to serve as trustees for the reasons above occasionally request that a third party associated with the insurance producer be allowed to serve as trustee (such as another insurance

producer in the office, a staff member of the insurance producer, or a family member). This type of arrangement is not viewed upon favorably by Pacific Life. Accordingly, Pacific Life will only allow an affiliated third party to serve as trustee if they are also an attorney or CPA. Pacific Life will also accept a bank or trust company as trustee provided you are not one of its officers, managers, or principals. These exceptions are allowed because attorneys and CPAs are subject to ethical rules and oversight imposed by their professional licensing organizations (such as a state bar), and banks and trusts are subject to regulatory oversight under state bank or trust laws.

In conclusion, the responsibilities of a trustee are complicated and technical. No person should serve as trustee without first thoroughly considering the responsibility and liability involved. Other than the limited situations described above, Pacific Life will not allow you, the insurance producer, to serve as the trustee.

## Chapter 10: Meeting Your Clients' Needs

### Determining Insurance Needs and Financial Objectives

It is important that you make reasonable efforts to determine the insurable needs and financial objectives of your clients based upon relevant information obtained from them. Doing so, can help ensure your clients purchase a product which assists in meeting their insurable needs and financial objectives.

Generally, a client's "insurable needs" are defined as risks associated with premature death or extended life. These risks may be managed appropriately with insurance products. A client's "financial objectives" consist of those financial goals over and above insurable needs.

#### Needs Assessment Process

During the needs-assessment process, you must apply your specialized knowledge to each of your client's specific circumstances. The objective is to recommend a product that satisfies your client's needs and objectives given their resources and willingness to accept risk. The needs assessment process requires that you pose various questions to your client regarding their insurable needs and financial objectives, including, but not limited to, questions regarding their current financial situation including, but not limited to, insurance and financial holdings. Once you have answered these, and other, questions, memorialize them and your recommendations in writing to your client. Before you recommend any specific product, make sure you have discussed the features, benefits, exclusions, and expenses (such as sales loads and surrender charges) of the various types of insurance products available.

#### Fact-Finding Tools

A client's "financial objectives" and "insurable needs" may be determined by the use of fact-finding tools. Fact-finding tools include questionnaires, financial plans, client profiles, and capital needs or financial needs analysis. You should demonstrate that you had reasonable grounds for believing your recommendation was suitable for the customer. Considerations may include:

- The customer's financial needs and objectives
- The customer's current financial condition, net worth, and income
- The customer's current and future income needs
- The customer's age/life stage
- The customer's existing coverage and risk tolerance

#### Reasonable Efforts

You are required to make **reasonable** efforts to obtain relevant information. There may be circumstances where no recommendation is appropriate. Make the client aware of your inability to provide a recommendation and retain your client's refusal to provide information, including detailed documentation regarding the difficulties that such a refusal presents to your client.

#### Non-Needs Based Sales

Insurance products may be sold based on reasons beyond "insurable needs," including legitimate financial objectives. Where practical and appropriate, and in all cases where required by law, we require that you make a reasonable attempt to determine your client's insurable needs and financial objectives. This will help ensure that your recommendation is appropriate.

## Annuity Contract Structuring

Contract structuring is largely about naming contract owners, annuitants, and beneficiaries to maximize a product's features while meeting the client's objectives. The way a contract is structured can affect when or to whom a death benefit is paid. It is important, therefore, to understand the consequences of contract structuring. For example, the death of an owner/annuitant may have different consequences than the death of an owner who is not also the annuitant. When structuring nonqualified contracts, generally the owner and the annuitant are the same person. However, there may be situations when the contract is structured with more than one owner or annuitant. In these situations, it's important to remember that death benefits will be payable at the death of the last remaining annuitant or the death of the first owner who is also an annuitant.

In addition to federal law requirements that a prospectus be provided to a variable product applicant prior to or at the time of sale, some states have laws that require you to provide your client with certain disclosures before or at the time the application is taken. Requirements vary by state. Insurance products may require disclosures such as Buyers Guides, Contract Summaries, Deferred Annuity Disclosures, and other miscellaneous notices. For certain disclosures, the insurance producer and customer may be required to sign and attach it to the application. A copy should be given to the customer. We make insurer disclosures, notices, and requirements available on our web sites and in our product sales kits.

## Stranger Originated life Insurance

Pacific Life prohibits insurance producers from engaging in any solicitation of its life insurance products in connection with a STOLI transaction. Stranger originated life insurance (STOLI) is a practice in which a life insurance contract is purchased by, or on behalf of, someone who has no insurable interest in the life of the insured. STOLI is inconsistent with state "insurable interest" laws. In addition, STOLI runs contrary to the purpose of life insurance, to protect beneficiaries (family, business, etc.) from potential economic hardship caused by the premature death of the insured.

## After The Sale

Routine review of your client's contract after the sale is an important part of helping your clients continue to meet their insurance needs and financial objectives. There are various components to ongoing client reviews including, but not limited to:

- the actual contract performance as compared to the original illustration.
- a review of the contract's performance in relation to any underlying sales concepts.
- insurance producer recommendations concerning coverage increases, decreases, changes in premium amounts or payment method, and changes in separate account allocations.
- additional or new product features that may not have been available when the contract was first purchased.

You should develop a process to ensure client information is kept current. This may be accomplished via virtual or in-person meetings, correspondence, and/or a fact finder tool. Remember to memorialize your discussion to evidence your ongoing review and service.

## Beneficiary Designations

It's important to keep beneficiary information current, especially in the event of major life events such as marriage, divorce, or the birth of a child. Often an owner will designate their spouse as the beneficiary of their contract. Several states have regulations that will automatically revoke such designations after a divorce.

Even without such changes, updates may be appropriate and should be a part of regular meetings with customers. For group insurance, employers should maintain current beneficiary designations. Providing current contact information for all beneficiaries will expedite payment of claims.

### Telephone and Electronic Requests for Annuity Transactions

Owners are entitled to make certain transactions (including account transfers, allocation changes, change of address, changes to withdrawal or preauthorized investing, and set up systematic withdrawals and partial withdrawals) by telephone or, to the extent available, electronically. Owners may also authorize other people to make transaction requests (including account transfers, allocation changes, change of address, changes to withdrawal or preauthorized investing, and set up systematic withdrawals and partial withdrawals) by telephone or electronically by indicating on the contract application (not available in New York), or by sending us instructions in writing in a form acceptable to us. This authorization DOES NOT give a registered representative discretionary authority to enter trades without the owner's prior instructions and consent. It enables the communication of trade instructions by the owner's registered representative to Pacific Life by telephone or electronically for trades that the owner authorizes their registered representative to make. Registered representatives are reminded of the importance of following their Broker-Dealer's policies and procedures and contacting their Broker-Dealer's compliance department with additional questions.

Telephone or electronic requests must be received at Pacific Life's designated processing location prior to the close of the New York Stock Exchange (usually 1:00 p.m. Pacific time) to receive same-day pricing of the transaction. Requests received after that time will be subject to next-business-day pricing. Pricing in either case reflects the value at market close.

We have established procedures reasonably designed to confirm that instructions communicated by telephone or electronically are genuine, which includes verification of personal identification. We may also record all or part of any telephone conversation with respect to transaction instructions. Pacific Life and its affiliates and their directors, trustees, officers, employees, representatives, and/or agents will not be held liable for any loss, liability, damages, cost, or expense for relying on any oral or electronic instruction pursuant to this authorization, so long as we comply with our procedures. All transfers and investment allocations are subject to the limitations set forth in the most recent Pacific Life prospectus. Pacific Life reserves the right to deny telephone or electronic request.

## Chapter 11: Privacy

Subtitle A of Title V of the Federal privacy law known as Gramm-Leach-Bliley, the Consumer Financial Protection Bureau, Federal Trade Commission implementing regulations, including the Financial Privacy and Safeguard Rules and state laws (“Laws”) impose certain legal obligations on insurance producers and insurance companies with regard to their collection, use and protection and disclosure of nonpublic personal information (“NPI”) by insurance producers and insurance careers. This chapter summarizes Pacific Life’s position as to your obligations under the Laws, and Pacific Life’s requirements as to your handling of NPI acquired in connection with distribution and the sale of Pacific Life products. Please understand that this chapter does not relieve you of your independent responsibility to consult with your own legal and compliance counsel to determine your compliance obligations under these Laws and any other applicable federal or state law, regulation, and guidance.

### Insurance Producer’s General Obligations

The following should be viewed as an introduction to, and an outline of, your general obligations. You have the sole responsibility to confirm that you are in compliance with these Laws and any other applicable federal and state laws.

#### **Covered Persons**

Persons covered under the Laws include individuals who purchase, seek to purchase, or in the past have purchased a product or service from an insurance company, and who provide their personal information to the insurance producer and the insurance company. Such covered persons also include past or present applicants, owners, insureds, annuitants, beneficiaries, and claimants. These persons are protected as to any private information they provide whether or not the product or service is ultimately purchased.

#### **Personal, Family and Household Purposes Only**

The Laws apply to private information obtained in connection with services and products obtained from insurance companies and producers for personal, family, or household use. These Laws do not apply to information obtained in connection with services and products obtained for business, commercial, or agricultural use.

#### **Type of Personal Information Protected**

Personal information protected under these Laws (called “non-public information” or “NPI”) is private information about the covered person that is acquired in connection with the solicitation of insurance products and services. NPI includes the person’s name, address or occupation, financial information, or Social Security number, medical or health information, and other personal characteristics such as general reputation, character, habits, or hobbies. It also includes information that indicates that the person is or has been a Pacific Life client. NPI does not include information that is generally available to the public (such as through public records or telephone books). These Laws and their safeguard provisions generally require insurance companies and producers to:

1. Provide notice of their privacy practices.
2. Allow consumers to opt out of the disclosure of their NPI to non-affiliated third parties.
3. Follow reuse and disclosure limitations on any NPI.
4. Implement safeguards to protect NPI.



## **Pacific Life Notices**

These Laws require that the consumer be provided with a special privacy notice at “the time of establishing a client relationship,” and not less than annually thereafter for as long as the contract remains in force. The Pacific Life annual notices to owners are mailed in spring of each year. The privacy notice must, among other things, explain how NPI is used and protected. Pacific Life has created its own privacy notice (the “Privacy Promise”), which Pacific Life requires insurance producers to hand deliver to the owners at the time of taking an application. Pacific Life includes the Privacy Promise in the contract delivery package sent to the insurance producer along with the contract. You can access a copy of the privacy notice on our website, [www.PacificLife.com/PrivacyPromise](http://www.PacificLife.com/PrivacyPromise).

Pacific Life strongly urges you to consult with your own legal and compliance counsel competent in privacy rules to determine if you must provide your own privacy notices to clients under these Laws or other applicable laws, regulations, and guidance.

## **Additional Resources**

National Association of Insurance and Financial Advisors (“NAIFA”) publishes an “Insurance Producer Privacy Guide” which summarizes these Laws and contains a sample privacy policy disclosure form.

Pacific Life strongly advises you to consult with your own legal and compliance professional in relation to your compliance and obligations in relation to state privacy laws and regulations in the United States such as the California Consumer Privacy Act as amended by the California Privacy Rights Act (Cal. Civ. Code §§ 1798.100 et seq.) (“CCPA/CPRA”), Massachusetts’ Standards for the Protection of Personal Information of Residents of the Commonwealth (201 CM 17: M.G.L. c. 93H), the Virginia Consumer Data Protection Act (Va. Code Ann. §§ 59.1-571 et seq.), the Colorado Privacy Act (Colo. Rev. Stat. §§ 6-1-1301 et seq.), the Connecticut Data Privacy Act (2022 S.B. 6), the Utah Consumer Privacy Act (Utah Code Ann. §§ 13-61-101 et seq.), and other laws and regulations of similar subject matter as they may apply to you.

## **HIPAA Compliance**

### **Applicability to Insurance**

Although insurance companies and insurance producers often collect a great deal of medical information, fixed and variable insurance products are not governed by the Health Insurance Portability and Accountability Act (HIPAA) because these products are not considered “health plans” under the law. Health insurance, including dental and vision, and long-term care products, however, are covered under the HIPAA Privacy Rule because they are specifically designed to pay for health care expenses.

### **What HIPAA Means to You**

Pacific Life as a covered entity needs to comply with HIPAA, as amended. However, Pacific Life does not carry out all its activities and functions by itself. Instead, it uses the services of a variety of other persons and business partners such as insurance producers, collectively (Business Associates).

### **What Is a “Business Associate”?**

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A “Business Associate” is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information (PHI) on behalf of, or provides services to, a covered entity. The Privacy Rule lists some of the functions or activities, as well as the services, that make a person or entity a business associate, if the activity or service involves the use or disclosure of PHI.

### **Insurance Producer as a Business Associate**

An insurance producer that performs services for Pacific Life may be considered a business associate and subject to HIPAA, because the services may involve the use and disclosure of PHI.

### **Business Associate Agreement**

The HIPAA Privacy Rule requires that a covered entity obtain satisfactory assurances from its Business Associates that they will appropriately safeguard the protected health information received or created on behalf of the covered entity. The satisfactory assurances must be in writing. Pacific Life will enter into business associate agreements in compliance with the relevant HIPAA provisions, as amended, to establish the permitted and required disclosures of PHI.

### **What does that mean to you?**

- You must sign a business associate agreement prior to performing any services for Pacific Life. No access to PHI will be allowed, no account will be set up, and no money will be paid for products or services until the contract is signed.
- You must not use or further disclose PHI other than as permitted or required by the business associate agreement or as required by law.
- Upon report of an unauthorized use or disclosure of PHI or other material breach of the business associate agreement, Pacific Life will initiate appropriate action.
- Contract renewal will be monitored for continued HIPAA compliance by the Pacific Life’s Privacy Officer.

### **Security Breach**

Security Breach means any act or omission that compromises the security, confidentiality, or integrity of personal information or the physical, technical, administrative, or organizational safeguards put in place to protect it. The loss of or unauthorized access, disclosure, or acquisition of personal information is a Security Breach whether or not the incident rises to the level of a security breach under applicable privacy and security laws.

You must immediately notify Pacific Life at [CorpCompliancePrivacy@PacificLife.com](mailto:CorpCompliancePrivacy@PacificLife.com) if you become aware of any unauthorized or unlawful processing of personal information or any Security Breach.

## Chapter 12: Record Keeping

Documenting client interactions, and keeping your files well organized and complete, will be your best defense when responding to a client complaint, a regulatory investigation, or a lawsuit stemming from how a case was sold.

### The Paper Trail

Typically, the first step in a complaint investigation by a regulator or opposing counsel is a reconstruction of the paper trail. It may be difficult to recall or prove years later what was discussed with your client at the time of the sale (and your recollection *will* differ from your client's). Something as simple as an informal contemporaneous note in your file documenting a brief telephone conversation with your client can sway a regulator, judge, or jury in your favor. Even better is a letter sent to the client documenting the substance of that conversation. You will be better served by being able to produce a complete, well documented file, and having this information in your files and available for review is required by various state insurance laws and regulations.

### What Should I Keep?

You should keep in your files, copies of:

- client data or fact-finding sheets, what you used to determine the insurable needs and financial objectives of your client (refer to the chapter "Meeting Your Clients' Needs").
- sales material of any kind including any "generic" sales material. Most state regulations are explicit for record keeping requirements for sales material. Your files as well as our files may be the subject of an examination by a state insurance department.
- contemporaneous telephone or meeting notes (indicate what options were discussed with your client, what decision was made and why, and what are the next steps to be done).
- any correspondence.
- all written solicitations, illustrations, product comparisons and proposals (keep rejected proposals and make a note as to why they were rejected).
- replacement or other state required forms.
- illustration or other special disclosure forms.
- signed and dated delivery receipts.

### How Long Should I Keep My Records?

We recommend keeping client files and related information on file for seven (7) years **after** the contract is no longer in force.

### Record Keeping for Variable Products

All books and records are to be maintained in accordance with Conduct Rule 3110 of the FINRA Manual, SEC Rule 17a-3, and according to the procedures of your Broker-Dealer. Check with your Broker-Dealer's compliance department for clarification of their contracts. Record keeping procedures for variable products include maintaining required client files and logs, such as:

- *Client Account Files:* Separate files for each client which include new account forms, confirmations and statements, correspondence to and from the client and any other documents pertinent to the client such as prospectus receipts, copies of checks, etc.
- *Daily Trade Log:* As required by your Broker-Dealer, this log reflects in a chronological order all securities orders placed through your office including whether the securities were bought or sold, dollar or share amount, name of the product, execution price and name of registered representative.
- *Customer Complaint File:* File must include copies of all written complaints and action taken to resolve the complaint. A complaint file must be maintained in your office even if the file is empty.
- *Advertising File:* The advertising file should include copies of all business cards and stationery, yellow page ads, newsletters, seminar invitations, mass mailing and direct mail, advertisements published in local newspapers, etc. All advertising and sales literature must be approved in writing by Pacific Life and your Broker-Dealer's registered principal prior to use.
- *Correspondence File:* Copies of any securities-related client correspondence, solicitations or recommendation letters must be reviewed by the registered principal of your office and initialed. The initialed copy of the correspondence should be maintained in a central correspondence file. Business cards and stationery (which are considered sales literature by FINRA) must reflect the affiliation with your Broker-Dealer.
- *Speaking Engagements:* This file should include copies of all public speaking forms which have been approved by a registered principal.
- *Office Examination File:* The file should include copies of any audits conducted by your Broker-Dealer, FINRA, SEC, state, or any other regulatory agency.

## Chapter 13: Replacements

We are committed to promoting a high standard of ethical conduct in all dealings with the public. Integrity, honesty, and fairness with respect to replacement sales are competitive advantages. In general, a “replacement” occurs when a new insurance contract is to be purchased and it is known (or should be known) to the insurance producer that in connection with the sale, existing insurance coverage has been or is to be:

- Lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer or otherwise terminated.
- Converted to reduced paid-up insurance, continue as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other contract values.
- Exercised any right to take a loan or partial withdrawal or otherwise accessed any portion of the existing contract’s value.
- Annuitized or take other distributions.
- Amended to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid.
- Reissued with any reduction in cash value.
- Used in a financed purchase.

“Financed purchase” means the purchase of a new contract involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing contract to pay all or part of any premium due on a new contract issued by the same insurer. If a request to withdraw, surrender, or borrow involves an existing contract that is used to pay premiums on a new contract owned by the same party and issued by the same insurer, within 4 months before or 13 months after the effective date of the new contract, it will be deemed prima facie evidence of the owner’s intent to finance the purchase of the new contract with existing contract values.

### **Internal vs. External Replacement**

When the contracts affected are all issued by the same underwriting company, the process is referred to as an “internal replacement.” When the contracts affected are underwritten by non-affiliated companies, the process is referred to as “external replacement.”

### **Determining if a Replacement is in the Best Interest of the Owner**

Replacements are a high-profile subject with both federal securities and state insurance regulators. Because of the increased attention, it is important that you understand the position of Pacific Life regarding replacements.

There are circumstances where replacing existing coverage may be in your client's best interest. Generally, however, replacement is not in your client’s best interest. Even if replacing a client’s existing coverage might bring coverage improvements, the costs of doing so must be weighed against the benefits gained. The information provided to the customer may include, but is not limited to, any product features, death benefits, living benefits, annuity payout options and amounts, existing and new surrender charges and periods, investment risk, new or higher charges and fees, and possible taxation. As to variable annuity sales, disclosure of all relevant information so your client can make an informed decision is consistent with current FINRA rules on suitability and fair dealing with clients. Be sure to follow any state replacement requirements and your Broker-Dealer’s procedures regarding replacements, exchanges, and suitability.

**Whether any replacement is in an owner's best interest is a determination to be made by that owner, in conjunction with their tax, legal and insurance advisors, after obtaining all information that they deem necessary in order to make that determination.**

It is, in part, the insurance producer's responsibility to facilitate the acquisition of this information. To assist in this determination, the insurance producer should provide information about how the proposed replacement may impact the current plan of insurance and current contract values.

In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether: (1) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements; (2) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and (3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

A deferred annuity to immediate annuity replacement should not be recommend unless the income options and income payout comparisons of the existing deferred annuity and the proposed replacement annuity have been considered and disclosed, including:

- the income options available under the existing deferred annuity contract and the proposed immediate annuity contract.
- the monthly (or other frequency) income available if the existing deferred annuity contract were to be annuitized as compared to the selected income option of the proposed immediate annuity contract.

In instances where the exact income option selected by the proposed immediate annuity consumer is not available under the existing deferred annuity contract, or where there are additional income or withdrawal options that have been purchased (i.e., an optional income rider for variable or fixed deferred annuities), the insurance producer should make a good faith effort to highlight the closest available income options.

### Application and Required Forms

State or company required replacement forms must be completed and signed by the insurance producer and client, with a copy given to the client at the time the application is completed. The completed forms must be submitted with the application to the home office. The replacement paperwork must be signed and dated on or before the application date, if required by the state.

For applications to replace existing life insurance:

- The application will be returned to the insurance producer and a letter of explanation will be sent to the applicant along with any money submitted to bind coverage if the appropriate replacement notice and other requirements do not accompany the life insurance application.
- Clearly advise the client not to make changes to their existing coverage until they are notified that their application with Pacific Life is approved. They should be careful not to cancel their existing coverage before they have received and reviewed the new contract.

**Please note that certain states forbid an insurance producer not licensed to sell variable products from recommending the replacement of a variable contract. It is the responsibility of each insurance producer to ensure that they are compliant with the requirements of state insurance law.**

Document discussions about the costs and benefits of the replacement and attach any supporting information. Provide this documentation to the client and maintain a copy for your files. All documentation should be maintained for at least as long as the contract is in force, plus seven years. Pacific Life may, from time to time, request information at its discretion.

### New York Regulation 60

New York's Regulation 60 applies to Pacific Life & Annuity Company issued contracts. It is designed to protect consumers by establishing minimum standards of conduct that must be followed for replacements, or proposed replacements. Regulation 60 requires a set process and criteria for individual insurance and annuity applications signed in New York.

- It applies to any annuity or life insurance contract sold in New York.
- Certain requirements must be completed on every sale in New York, even when there is no replacement.
- If a transaction involves a replacement (as defined by New York), additional disclosure is required on a Regulation 60 Disclosure Statement so that the applicant is provided with full and clear information on which to make a decision in the applicant's best interest.
- For all replacements, producers must act in their clients' best interest and follow the requirements of Insurance Regulations 60 and 187, including consideration as to whether a consumer will lose existing contractual benefits, such as living and death benefits, as well as having a reasonable basis to believe that the proposed annuity contract is suitable based on the consumer's suitability information.
- In the case of a deferred annuity to immediate annuity replacement recommendation, the insurance producer must consider and disclose to the applicant in the Regulation 60 Disclosure Statement the way or ways in which the new proposed immediate annuity is superior to the option of annuitization or other income payout options that may exist under the existing annuity contract.

### Free Look Period

- **Fixed annuities:** The client has a 60-calendar-day return- of- premium free-look on fixed annuity contracts issued as a result of a replacement.
- **Variable annuities:** The client has a 60-calendar-day return- of- contract-value free-look on variable contracts issued as a result of a replacement. Because the client bears the market risk during the free-look period, the amount returned may be less (or more) than the purchase payment.

Regulation 60 requires that a Definition of Replacement form be completed with each client at the time the application is completed. It determines if a replacement is taking place through several "yes" or "no" questions.

Although owners have the right to replace existing contracts after having indicated in or as part of their application that they did not intend to, Regulation 60 provides that patterns of such action by multiple owners having the same insurance producer shall be deemed evidence of the insurance producer's knowledge that a replacement was intended.

## Long-Term Care Coverage Replacement

The following considerations apply to the replacement of long-term care coverage:

- How long ago did the client buy the contract they have now? Contracts have improved a great deal, so a relatively new contract may provide better coverage.
- Older long-term care coverage can contain limitations and exclusions that limit the coverage and protection they provide. An old contract with limiting provisions like prior hospitalization, conditional renewability or exclusions for Alzheimer's disease may provide little protection to the insured.
- How much older is the client today than when they bought the existing long-term care coverage? There is an advantage to buying younger and *locking in* at a lower issue age premium. This advantage would be lost if someone replaced coverage with another contract at a much older issue age. Is the *better* coverage of a new contract worth the higher age premium?
- Are they still insurable? A client who may not be insurable based on their current condition should retain their existing coverage, even if another contract offers improvements.



## Chapter 14: Retirement Sale (Life Insurance Sales)

The title “Private Pension Plan” may not be used when referring to a life insurance product. The phrase Private Pension Plan is considered deceptive because it leads the reader to believe they are getting more than just a life insurance contract. While the state departments of insurance continue to question the use of life insurance as a source of supplemental retirement income, they have come to understand the role that life insurance can play in retirement planning.

### Required Disclosures

The following should be included in any presentation in which life insurance is proposed (especially when it is proposed as a source of supplemental retirement income):

#### **It’s Life Insurance**

Clearly indicate from the beginning that the topic of the presentation is life insurance and use life insurance terminology to describe insurance features (i.e., client pays “premiums” not “deposits” or “contributions”). Do not confuse life insurance features with the concept you are presenting. For example, where appropriate, your materials should indicate life insurance cash surrender values – and not “plan benefits” - accumulate “tax-deferred.”

#### **Discuss Loads**

Discuss the existence of contract loads, insurance charges, surrender charges, etc. Many life insurance complaints are generated by owners, who are shocked when told the surrender proceeds are less than premiums paid. Complainants will point to sales materials that state, “withdrawals can be made without penalty.” The materials may have intended to reference the tax penalties associated with pre-mature or excess distributions from qualified plans, but what did your client hear? What will the materials show?

#### **Long Term**

Stress the long-term nature of a life insurance purchase.

#### **Describe Overfunding**

Describe how the appropriate premium level is determined, and if used, the concept of “over funding” the contract (paying higher premiums for a smaller death benefit). Tell the client that they will be paying significantly more this way than if just buying pure death benefit protection such as a term contract (and explain that this is intentional).

#### **Underwriting**

Describe the underwriting process and potential ratings or extra charges. Most life insurance retirement sales place focus on the lack of “limits” with life insurance, but this is meant as a comparison to typical qualified plan contributions or growth limitations. Every life insurance application is subject to underwriting for both health and financial reasons which may limit the size of the contract, and the amount of premium that can be paid, or could disqualify your client from obtaining life insurance altogether.

#### **Changes in Premium Patterns**

Explain to the client what happens if planned premiums are reduced, skipped, or if additional premiums are paid. For example, if you are describing a flexible premium life insurance contract, describe how a skipped or

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reduced premium will impact the overall goal of using the contract to supplement retirement income. That is, while it is a flexible premium contract and may remain in force at a reduced premium level, there may be adverse consequences if the client reduces or skips too many premiums. This is also a good opportunity to explain that care must be taken if they choose to pay more than the planned premium in the future. Warn of possible adverse tax consequences such as Seven Pay or Guideline Premium Limit violations.

### **Current vs. Guarantees**

Emphasize that current interest rates and contract costs are not guaranteed, and clearly describe what is guaranteed. In your presentation, whenever providing projected contract values, base the values on the insurer's current scale and present values based on guaranteed elements (as prominently and in close proximity to the current rate projections).

### **How Changes in Interest Rates Impact Contract Performance**

Describe the impact changes in interest rates will have on cash value and ultimate performance of the contract (i.e., possibility of reappearing or increased premiums, or a decrease in the amount of projected retirement income or in the number of years income will be received). Discuss both sides of the equation, that is, decreasing as well as increasing rates.

### **Withdrawals and Loans**

Describe how withdrawals and loans impact contract cash values and death benefits both at the time of the loan or withdrawal and for any planned future actions, both prior to and at retirement. Describe how a loan program ultimately affects contract values and performance; discuss how loan interest is paid, how loans are repaid from death benefits, and strongly emphasize the importance of keeping the contract in force until death or maturity (regulators are looking for disclosure of adverse tax consequences if a contract should lapse with outstanding loans).

### **Tax Matters**

Use a "Tax Issues" section for your presentation where key tax issues relevant to the presentation being used can be completely described. Every mention of a tax advantage of life insurance in a presentation should be asterisked ("\*") and referenced to the "Tax Issues" section.

### **Full Disclosure**

If your client asks a question about your proposal, answer it directly and completely. Try not to shield your client from complicated topics by shortcutting your answers. Later, it may appear as though you were intentionally withholding information from your client, even if this was not your intent. We strongly urge you to contact Pacific Life immediately when faced with a client complaint.

## Chapter 15: Sales Material Review and Approval

We are committed to providing advertising and sales materials that are clear as to purpose and honest and fair as to content. We are further committed to helping ensure that sales materials used in connection with the sale of Pacific Life's insurance products accurately follow applicable laws and regulations. Materials used in the solicitation and sales process must be comprehensible considering the complexity of the product, and illustrations must be accurate, fair, and appropriately disclose guaranteed and non-guaranteed elements. Failure to comply with these procedures may result in disciplinary action up to and including termination of your appointment, and if applicable, the Non-Variable Producer Agreement with Pacific Life.

State insurance laws require every insurer to establish and maintain a system of control over the content, form, and method of dissemination of all sales material that may be used in connection with the sale of its contracts. To maintain this system of control, you are required to submit all sales material that can be used in connection with Pacific Life insurance products to CMD Marketing Sales Material Process for review and approval prior to use, regardless of by whom written, created, designed, or presented.

### **What is Sales Material?**

Pacific Life considers all sales material to be an advertisement, which is defined by the NAIC's Advertisements of Life Insurance and Annuities Model Regulation (NAIC Model) as any material designed to create public interest in life insurance, annuities, an insurer, or an insurance producer; or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a contract.

Examples of sales material include, but are not limited to:

- Concept presentations incorporating life insurance (such as a deferred compensation plan or an estate tax analysis) or annuity (such as retirement planning and annuity).
- Letters to potential or existing clients such as direct mail marketing/form letters.
- Prepared sales talks, presentations, and materials for use by insurance producers.
- Brochures, flyers, circulars, newsletters,
- Material published or designed for use in a newspaper, magazine, directory, or other public media such as a website, audiovisual materials and scripts or other electronic media.
- Standardized or personalized performance reports or summaries, or customized Illustrations.
- Material used for the recruitment, training and education of insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a contract.
- Social media platform used for business purposes (e.g., Facebook, LinkedIn, Twitter).

We strongly encourage the use of advertising and sales materials created and designed by the Pacific Life Home Office. We make these available to you on our producer web sites and in our product sales kits. All such materials are clearly identified as Pacific Life's materials. They have been assigned a form number by Pacific Life and have been reviewed and approved for your use by Pacific Life. Any advertising and sales material that has been marked by Pacific Life as "For Broker-Dealer Use Only. Not For Use with the Public" or "For Producer Use Only. Not For Use with the Public" has been prepared for your educational and informational use and may not be used with or given to a client, prospect, customer, or Pacific Life contract owner.

## Purpose of Review and Approval

The purpose of the Sales Material Approval Process is to ensure compliance with applicable state insurance laws and regulations regarding sales material. The sales material that you submit for approval must be accurate, complete and, where applicable, consistent with the contract, prospectus and product specifications, and the requirements outlined in the Sales Material Primer. To help ensure this, multiple subject matter experts may be required to review the submitted material based on the content, including but not limited to, Marketing, Law, Case Design, Compliance, and the Advance Design Unit.

Sales material already approved must be resubmitted for review when it has been modified, rewritten, excerpted, or customized. Note that the approval of sales material expires three years from the date of the approval. As such, the expired material may no longer be used unless it is resubmitted for review and approved.

In addition to submitting sales material to Pacific Life, registered representatives must submit each advertisement, sales and marketing material piece to their Broker-Dealer's compliance department in accordance with their Broker-Dealer's compliance procedures. The material may not be used without Pacific Life's written approval and the approval of the Broker-Dealer. Pacific Life may request for additional information about these submissions such as Broker-Dealer approval and/or FINRA letter. If the Broker-Dealer requires any changes after Pacific Life's written approval, the material must be resubmitted to Pacific Life for approval.

## Sales Material Primer

Most states have regulations based on the NAIC Model, which set forth minimum standards and guidelines to assure full and truthful disclosure to the public of all material and relevant information in the advertising of insurance. The following are a few of the NAIC Model's guiding principles.

- Present the form and content of sales material in a complete and clear manner, and not in a format that is ambiguous or misleading.
- Clearly identify the name of the insurer whenever a specific insurer or product is being described.
- Indicate your certifications or licenses in conjunction with your identification as an independent insurance producer of the insurer but refrain from using "financial planner," "investment advisor," "financial consultant" or "financial counseling" that implies you are engaged in an advisory business.

## Long-Term Care Coverage Marketing Procedures

Each insurance company marketing long-term care coverage must establish marketing procedures to ensure that all marketing activities by its insurance producers are fair and accurate. Accordingly, in addition to those topics discussed within this Compliance Reference Guide, Pacific Life prohibits the following:

- Comparing any insurance contract in a manner that is unfair or inaccurate.
- Selling excessive insurance, which is any insurance that the applicant does not need or cannot afford.
- Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance contracts or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance contract or to take out a contract of insurance with another insurer ("Twisting").
- Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance ("High pressure tactics").

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- Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is of insurance and that contact will be made by a life insurance producer or insurance company (“Cold lead advertising”).

## Chapter 16: Sales, Solicitations, & Related Activities

Pacific Life requires that all sales, solicitation and related activity take place within one state. This is to avoid being subject to the laws of multiple states, including but not limited to the requiring of multiple licenses and appointments. Once you begin the application process, you should complete all remaining parts of the transaction in that state. For example, when you and your client finally sit down to execute the application in California, all future new business-related forms should be signed, and the contract should be delivered in California.

### Definitions

- *Sales Activity*: the solicitation, application for, and delivery of a life insurance or annuity contract.
- *Solicitation*: any activity that leads to, or is intended to lead to, the sale of insurance, including face-to-face conversations, mailings, seminars, telephone calls, e-mail, etc.
- *Delivery*: the transfer of the contract from the life insurance producer to the owner and includes transfers by any means, whether accomplished face-to-face or by the mail.

### Pacific Life Insurance Company & New York Sales

Pacific Life Insurance Company (PLIC) does not transact business within New York. Accordingly, you may not engage in sales activity with respect to a PLIC product in New York.

### Pacific Life & Annuity Company Sales

While Pacific Life & Annuity Company (PL&A) is licensed in all states, product offerings may vary.

#### *Individual Annuity*

You **may not**:

- Solicit a PL&A annuity by mail, telephone, or by any other means outside of New York State.
- Issue or deliver by mail or by any other means a PL&A annuity outside of New York State.
- Collect any initial premium or other consideration for an annuity, by mail or by any other means outside of New York State.

PL&A may issue an annuity contract to a non-New York resident, if, at a minimum, each of the following conditions is met:

- Neither PL&A nor you contact the non-New York resident by mail, telephone or by any other means in any state but New York regarding the sale of the PL&A annuity.
- The prospective annuitant/owner must be physically in New York in order to negotiate the contract. That is, the **solicitation** and **execution** of the application must take place **in** New York. This means that you cannot provide sales materials or illustrations to or have discussions about PL&A annuities with someone located outside of New York, nor can the application be completed outside of New York.
- The annuity contract must be physically **delivered** to the prospective owner **in** New York. This means that you cannot personally deliver or mail the contract into a jurisdiction other than the state of New York.
- The initial premium must be delivered by the prospective annuitant/owner to PL&A or you from a New York location. That is to say, the initial premium cannot be delivered by mail or other means from

another jurisdiction to PL&A or you. This can be done at the same time the contract is physically delivered to the prospective annuitant/owner *in* New York as required above.

- You must be licensed to do business in New York and appointed by PL&A prior to solicitation.
- You may need to be registered to sell securities in the applicant's state of residence. Please consult your Broker-Dealer with respect to this requirement.

Any aspect of the annuity transaction that occurs outside of New York may trigger a violation of state insurance law, and subject both PL&A and you to fines and/or sanctions by one or more state departments of insurance. It also may establish grounds for rescission of the annuity contract, chargeback of commissions, and a revocation of your license and appointment with PL&A.

### Insurance Sales and The Laws of Foreign Nations

Each sovereign country has the right to enact laws governing the sale of insurance to protect the wellbeing of its residents. As discussed, Pacific Life may not (nor may you with respect to Pacific Life business respectively) transact the business of insurance anywhere other than in the individual states in which Pacific Life is licensed, their products have been approved, and in which you have been state licensed and appointed by Pacific Life. If you violate these rules, you expose both yourself and the company to large monetary fines, even when this violation is merely negligent. The following general rule has been developed:

**All insurance sales activity – including solicitation, completion and execution of the application, medical and paramedical examinations, as well as contract delivery – must be performed by the pertinent parties while each is physically present within the United States.**

Physical presence within the United States requires all parties to be present in one of the states in Pacific Life is licensed to transact business, the product being solicited has been approved and in which you are licensed and appointed. For example, you are prohibited from sending a letter into Canada in order to set up a meeting to discuss insurance with a potential client, even if that meeting will be in the U.S. If the applicant is outside of the United States, you may not contact them about the sale by any means whatsoever at any point in the sales process. Neither you nor the owner may enter a non-U.S. jurisdiction for the purpose of contract delivery.

With respect to obtaining the insured's consent where the insured is not the applicant or owner, the insured must also be physically present in the United States when providing this consent, except that (1) where the insured will have no ownership rights in the contract, and (2) the contract will be issued on a guaranteed issue basis, the insured may consent while present in a foreign jurisdiction. These rules apply equally to all applicants, whether U.S. citizens or aliens, whether U.S. resident or nonresident. Your staff and employees are prohibited from any activity that is prohibited to you directly.

Pacific Life's Wealthy Global Citizen Program, formally known as the International Risk Program does not provide for an exception to the rules discussed in this chapter. The Wealthy Global Citizen Program is limited to establishing our underwriting criteria for the sale of insurance on the lives of certain non-U.S. residents. As with any other sale, all sales activity must occur solely and completely in jurisdictions in which Pacific Life is duly licensed, the product being solicited has been approved and where you are properly appointed.

### U.S. Possessions, Territories and Military Bases Sales

Pacific Life has not been admitted to engage in the business of insurance in any U.S. possession or territory, including Puerto Rico, Guam, and the U.S. Virgin Islands, nor has it received permission to solicit or sell

insurance on any military base or embassy abroad. Thus, neither Pacific Life nor you may engage in sales activity with respect to a Pacific Life product in these locations.

### Sales to the Military

The solicitation and sale of insurance to active-duty members of the United States Armed Forces require your compliance with all applicable state, federal, and military laws and regulations. Be aware that state laws based on the NAIC Military Sales Practices Model Regulation declare certain practices in relation to the solicitation and sale of insurance to be false, misleading, deceptive, or unfair. You are encouraged to familiarize yourself with these laws to ensure compliance.

Pacific Life does not permit the solicitation and sale of its insurance products on a military installation. A "military installation" is any federally owned, leased, or operated base, reservation, post, camp, building, or other facility where service members are assigned for duty, including barracks, transient housing, off-base family quarters, recruiting offices, and the Pentagon. It is important that you first determine for each and every solicitation whether an applicant for an insurance product is an active-duty member of the U.S. Armed Forces ("service member"). U.S. Armed Forces includes the Army, Navy, Air Force, Marine Corps, and Coast Guard. Active duty means full-time duty in the active military service of the United States, including the National Guard and Reserve, while serving under published orders for active duty or full-time training for a period of 31 calendar days or more.

If the applicant is an active-duty service member, a disclosure is required to be provided to the applicant at the time of sale. This disclosure, entitled "Important Notice for Active-Duty Members of the United States Armed Forces," is available in our sales kits.

The state laws referred to above restrict how an insurance contract can be funded and financed. Some of these restrictions state that you may not do any of the following:

- Use any allotment form or similar device used by the military to direct a service member's pay to a third party for the purchase of an insurance product.
- Where there is no formal banking relationship between the service member and a depository institution, such as a bank, you may not:
  - Knowingly receive funds for purchase payments for the contract.
  - Employ any device whereby the funds received for purchase payments are identified on the service member's Leave and Earnings Statement as "Savings" or "Checking."
  - Enter into any agreement with a depository institution to accept funds from a service member.

### Trustee Purchases

In the sale of an insurance contract to a trustee of a trust, the location of the solicitation with the trustee (and not the situs of the trust) when the contract is solicited, the application is executed, and the contract is delivered will determine where you must be licensed. The fact that a trustee is involved in the transaction does not alter the rule that you must be appropriately licensed and appointed in all jurisdictions in which sales activity occurs. The trust situs - that is, the place where the trust is executed or is to be performed - is not necessarily a jurisdiction in which you must be licensed.

### Sales of Individual Insurance and Mutual Funds

Certain states have adopted regulations governing correlated sales of individual insurance products and mutual funds to ensure that a purchaser understands that the proposed insurance is not dependent upon their

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purchase of the proposed mutual fund. The correlated sales regulations apply to all acts and practices in the advertising, promotion, solicitation, negotiation of, or effecting the sale of, insurance products in correlation with the shares of a mutual fund, including but not limited to:

- Sales of individual insurance products and mutual funds as part of an integrated plan;
- Sales in which both individual insurance and mutual funds are discussed, and their purchase solicited during the same interview.

This definition does not require the same company offer both the insurance and mutual fund.

### **Contract Delivery**

Upon receipt of a newly issued contract, you are expected to promptly deliver the contract to the owner of record. A delivery receipt must be signed and returned by the owner.

Several states impose additional requirements when attempting to deliver a contract by mail. It is your responsibility as an insurance producer of Pacific Life to be aware of these applicable state requirements.

## Chapter 17: Seniors and Vulnerable Adults

Financial exploitation of seniors and other vulnerable persons is a type of fraud and abuse that is a growing concern throughout the financial services industry. The needs of senior investors, investors who are at or nearing retirement, or other vulnerable persons require special consideration and attention in connection with the selling and servicing of insurance. States may have specific laws regarding elder abuse as well as specific laws and/or regulations governing the sale of insurance and might impose specific obligations on you as the producer in your conduct with seniors and other vulnerable adults. As an insurance producer, you are more likely to encounter a situation of financial exploitation.

### Who Are Seniors and Vulnerable Persons?

- *Seniors*: The legal and regulatory definitions of terms like “senior” and “elder” differ slightly, but for purposes of preventing financial exploitation, we consider seniors to be individuals who are sixty years of age or older.
- *Vulnerable Persons*: Again, definitions vary, but we consider a “vulnerable person” to be an individual eighteen years of age or older who has a temporary or permanent mental or physical impairment (such as persons suffering from diminished capacity caused by trauma, disease or the influence of drugs/alcohol) which renders the individual unable to protect his or her own interests.

### What is Financial Exploitation?

There is currently no uniform definition of financial exploitation. The Elder Justice Act defines exploitation as “the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings or assets.” In plain terms, financial exploitation results in the theft of money or property. It is commonly committed by a family member, caregiver, or other trusted acquaintance who lies, manipulates, or coerces the senior or vulnerable person for financial gain.

### Recognizing Red Flags

As a producer, you have a good idea of the behavior and transactions that you expect from your clients. When you see activity that varies from those expectations, it may be suspicious. This activity is known as a “red flag.” Financial exploitation red flags can relate to a client’s behavior and financial activity. Decreased cognitive awareness (as in the case of dementia and Alzheimer’s disease) can result in seniors or other vulnerable persons becoming reliant on others to make financial decisions on their behalf.

### Examples of Behavioral Red Flags

- The inability of the client to hold a prolonged conversation; it becomes challenging for the client to follow directions and/or complete paperwork.
- The client exhibits potential signs of diminished capacity such as confusion, forgetfulness, unexplainable disorientation, depression, communication impediments or unresponsiveness.
- When asked questions about financial information, the client shows uncommon memory gaps, confusion, or lacks knowledge about personal financial status.
- The client is making repetitive phone calls and asking the same questions.
- The client shows uncharacteristic stress regarding life and relationships.

- The client shows unexplained or unusual excitement over a financial windfall or prize check.
- There is a sudden appearance of newly formed friendships or previously uninvolved relatives.
- Trusted others show an excessive interest in the client's finances and products.
- The client appears to be unduly influenced or manipulated by another party.
- There is an appearance of insufficient care or neglect despite the client having adequate resources.

### **Examples of Financial Activity Red Flags**

- The client seems dazed, nervous, or fearful when discussing financial matters.
- They are confused or unable to recall a request or transaction.
- Explanations for transactions are contradictory or questionable.
- There is a significant change in the client's financial habits (such as more frequent or larger withdrawals or activity).
- There is another individual such as a family member or caregiver insistently requesting information or attempting to make changes with respect to the client's products.
- An alleged guardian or individual with alleged Power of Attorney (POA) for the client refuses to provide legal documentation of their authority.
- There is more than one person claiming legal authority for the client.
- Abrupt changes in wills, trusts or POAs are occurring.
- A family member, attorney-in-fact, guardian, or caregiver refuses to allow you to speak to the client, or only allows communication with them controlling the client's responses.
- There are questionable signatures on documents, or it appears that numbers have been forged or changed.
- There are sudden or unexplained address changes or changes in beneficiaries.
- The client is showing disregard to penalties (e.g., surrender charges).
- Significant funds (for that client) are at stake.

The existence of red flags does not necessarily mean that a client is the victim of financial exploitation; however, such activities raise concerns and warrant further investigation.

### [Helping Protect Seniors and Other Vulnerable Persons from Harm](#)

Producers are in a unique position to identify vulnerable persons as well as prevent and report abuse. If you notice or become aware of financial exploitation red flags, raise your concerns in accordance with your firm's escalation process. Certain states have laws concerning the protection of seniors and vulnerable persons. Under these statutes, persons working in the financial services industries, including insurance producers, who are aware of the mistreatment of a senior or vulnerable person may be urged or required to report such information to a law enforcement agency within twenty-four hours after making the observation or discovery. Additionally, some states have specific senior-related disclosures that must be made prior to the sale, solicitation, or negotiation of, among other things, insurance products.

### [Senior Investor Considerations and the Use of Professional Designations](#)

Professional designations are proliferating, and regulators have begun taking notice of their use and the potential for misuse in light of the aging U.S. population and the ever-growing number of Americans who are at or near retirement. You must follow all state laws and regulations, federal securities laws, and FINRA rules that address the use of professional designations with the public. Registered representatives are prohibited by FINRA rules from making false, exaggerated, unwarranted, or misleading statements or claims in

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communications with the public. This FINRA prohibition includes referencing nonexistent or self-conferred degrees or designations or referencing legitimate degrees or designations in a misleading manner. You may not use any title or designation that conveys an expertise in senior investments or retirement planning where such expertise does not exist, as such use may violate applicable state laws and regulations, FINRA rules, and possibly the antifraud provisions of the federal securities laws.

The National Association of Insurance Commissioners (NAIC) has adopted the *Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities* (NAIC Model). Since the NAIC Model was adopted, various states have enacted or introduced laws aimed at producers who misrepresent their level of expertise in marketing and sales activities that involve senior citizens or retirees.

The NAIC Model establishes a standard for the sale or solicitation of life insurance and annuities, and whether the use of a particular designation indicates or implies, in a way that misleads the consumer, the producer has special training or knowledge in advising seniors. Generally, it prohibits the use of senior-specific certifications or professional designations (1) by a producer who has not actually earned or is ineligible to use same; (2) that are nonexistent or self-conferred; (3) that imply a level of qualification the producer does not have; (4) that are issued by organizations that are primarily engaged in marketing or sales instruction and do not have procedures for monitoring or disciplining their designees for improper conduct or that do not have reasonable continuing education requirements.

All producers, whether or not FINRA registered, must understand and comply with state and federal laws relating to the use of senior or retirement specific designations, certifications and titles, and the standards imposed by these laws.

## Chapter 18: Suitability

Pacific Life's expectation is that the recommendations you make to customers in the course of selling Pacific Life's insurance products are reasonable and based on thorough assessment of the customer's insurance needs and overall financial objectives, and consistent with applicable law.

Generally, you should have reasonable grounds for believing your recommendation is suitable for your client and must make reasonable inquiries to determine suitability. The suitability of a particular recommendation and insurance sale is determined by reference to the totality of the circumstances, including but not limited to the client's income and assets, the client's need for insurance, and the values, benefits, and costs of the client's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended contract.

Your recommendation should be based on facts disclosed to you by the applicant after reasonable inquiry as to their age; annual income; financial situation and needs, including debts and other obligations; financial experience; insurance needs; financial objectives; intended use of proposed product; financial time horizon; existing assets or financial products, including investment, annuity and insurance holdings; liquidity needs; liquid net worth; risk tolerance, including but not limited to willingness to accept non-guaranteed elements; financial resources used to fund the proposed product; tax status; investment sophistication and ability to understand the complexity of products; and any other information known, used, or considered to be reasonable by you in making the recommendation.

- California: also consider whether or not the consumer intends to apply for means-tested government benefits, including but not limited to, Medi-Cal or the veterans' aid and attendance benefit.
- California and Minnesota: also consider whether or not the consumer has a reverse mortgage.

It's important that you document the basis for any recommendations that you make to your clients. Keep in mind that Pacific Life may request such documentation at its discretion.

### Federal Guidelines for Annuities and Life Insurance

#### FINRA

The Financial Industry Regulatory Authority (FINRA) has imposed additional requirements with respect to product recommendations in the variable life and variable annuity context. If you are a registered representative, you must always follow your Broker-Dealer's procedures regarding the offer, sale, solicitation, or negotiation of variable insurance products, including procedures related to determining and documenting the suitability of any variable insurance product(s) recommended to your client. You must comply with all FINRA Conduct Rules and applicable state laws and regulations on suitability. The requirements of such rules, laws and regulations generally include, but are not limited to, the following principle:

**A registered representative must have reasonable grounds for believing that the recommendation of a variable insurance product or optional benefit offered in that product is suitable for the applicant. Similarly, a registered representative must have reasonable grounds for believing that the recommendation of any particular investment option within the product is suitable for the applicant.**

- Refer to FINRA Regulatory Notice 07-43 and follow your Broker-Dealer's guidelines for considerations regarding suitability and senior investors (generally, aged 60 and above or those nearing retirement).

- Refer to FINRA Notice to Members 99-35, when you recommend the purchase of a fixed or variable annuity for any tax-qualified retirement account (e.g., 401(k) plan, IRA). The recommendation should be made only when the annuity's other benefits, such as lifetime income payments and family protection through the death benefit, support the recommendation.

### **Securities and Exchange Commission**

The Securities and Exchange Commission Regulation Best Interest (SEC Reg BI) addresses standards of care that insurance producers must adhere to when making recommendations to consumers. In general, these regulations require the insurance producer to satisfy certain obligations when making a recommendation to a consumer, including:

- The obligation to disclose all material facts (e.g., any compensation, type and scope of services provided, and (if any) conflicts of interest)
- The obligation to exercise reasonable diligence, care, and skill and act in the consumer's best interest (i.e., not place its own interests ahead of the consumer's interests)
- The obligation to establish, maintain, and enforce procedures reasonably designed to identify and, at a minimum, disclose or eliminate all conflicts of interest associated with the recommendations.

### [State Guidelines for Annuities and Life Insurance](#)

#### **New York: Regulation 187 - Suitability and Best Interest in Life Insurance and Annuity Transactions**

New York Insurance Regulation 187 (NY 187) applies to Pacific Life & Annuity Company and covers new sales and in-force annuity transactions. It is designed to protect consumers by requiring insurance producers to consider recommendations that are suitable based on applicable facts disclosed by the consumer and acting in the consumer's best interest. NY 187 also establishes best interest obligations for producers and insurers involved in the sale of insurance. All recommendations concerning the purchase and replacement of life insurance, annuities, and certain other in-force transactions, with respect to contracts delivered or issued for delivery in New York, must comply with NY 187.

In general, NY 187 requires a producer soliciting life insurance or annuity products in New York to engage in a heightened suitability determination as outlined by the Regulation. These obligations extend to both new sales and in-force or post-issuance transactions.

If you are an insurance producer making recommendations to a consumer related to insurance products issued or delivered in the state of New York, you must review NY 187 and ensure your compliance with its various requirements. In addition, if you are a registered representative associated with a Broker-Dealer, you must follow your Broker-Dealer's procedures related to determining and documenting the suitability of any insurance product recommended to your client under amended NY 187.

In recommending a sales transaction to a consumer, the purchase or replacement of an insurance contract, the producer, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance contracts and as to the consumer's financial situation and needs, including the consumer's suitability information, and that shall act in the best interest of the consumer. The producer must document:

- The basis for any recommendation made, or If relevant, the consumer's refusal to provide suitability information, and

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- That a sales transaction is not recommended if a consumer decides to enter a sales transaction that is not based on the producer's recommendation.

In-force transactions require a best interest review by the insurance producer. This means any recommended annuity transactions should be properly documented. The documentation should include the basis for the recommendation and reason the recommendation is in the customer's best interest and retained in your file. In addition, if a customer refuses to provide suitability information and/or does not accept your recommendation, document the reasons why the recommendation was not accepted. This applies to every producer who materially participates in the making of the recommendation and received compensation as a result of the sales transaction, regardless of whether or not the producer was in direct contact with the consumer. PL&A will require producers to certify that in-force recommendations are in the consumer's best interest such that the producer has complied with their obligations under NY 187.

## State Guidelines for Annuities

### **National Association of Insurance Commissioners Suitability in Annuity Transactions Model**

The National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation (the "NAIC Model") requires producers to act in the best interest of the consumer when making a recommendation of an annuity so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed. Many states have adopted the NAIC Model best interest standard for annuity sales. It is important for you to be aware of the standard of care for annuity sales in the state or states where you sell annuities. While the NAIC Model provides an excellent guide for the best interest standard of care, you should always refer to the specific law in the state or states where you sell annuities.

A producer, when making a recommendation of an annuity (the NAIC Model defines "recommendation" as advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice) shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the obligations regarding care, disclosure, conflict of interest, and documentation.

Any requirement applicable to a producer shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back-office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

### **California and Minnesota**

In the states of California and Minnesota, it is prohibited to recommend that an insured 65 years of age or older purchase an unnecessary replacement annuity. An unnecessary replacement means the sale of an annuity to replace an existing annuity that requires that the insured will pay a surrender charge for the annuity that is being replaced and that does not confer a substantial financial benefit over the life of the contract to the purchaser so that a reasonable person would believe that the purchase is unnecessary.

## Virginia

As mentioned previously, the NAIC Model defines recommendation as advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.

Along with purchase, exchange and replacement, Virginia also included “surrender” in their definition of a recommendation when adopting their version of the NAIC model. As such, any recommendation a producer makes to a Virginia client to surrender their existing contract must be in the client’s best interest. If an insurance producer recommends a surrender, they should be sure to communicate, document, and retain the basis of the recommendation to the customer. Producers should also continue to consult their Broker-Dealer, if applicable, and follow their procedures.

### State Guidelines for Long-Term Care

An insurance company must establish suitability standards that insurance producers must follow to help their clients determine whether buying long-term care coverage is appropriate for them, based on financial and other considerations. Pacific Life has established the following suitability standards for the sale of its long-term care coverage. Long-term coverage may be a good choice for customers who:

- Are living comfortably financially on income provided by an occupation, pension or retirement plan, investments, Social Security, or other sources.
- Can afford to liquidate and reinvest assets for long-term care needs, rather than relying on them for current income.
- Have assets they wish to reposition to better meet retirement and future long-term care needs.
- Want to be able to enjoy a secure retirement.
- Want to be able to preserve assets which they can pass on to their heirs.
- Have at least \$20,000 in annual income **and** at least \$30,000 of assets excluding their home and the long-term care insurance premium (“Questions Related to Your Income” and “Questions Related to Your Savings and Investments” on the *Long-Term Care Insurance Personal Worksheet*).

Pacific Life’s long-term care coverage may not be suitable for clients who:

- Intend to pay the premium from assets, or income from those assets, on which the client relies to meet their daily living expenses.
- Have limited assets or income such that they cannot easily afford the premium.
- Have savings vehicles that can only be accessed with substantial early liquidation penalties and can’t otherwise pay the premium.
- Are currently receiving or expect to soon be eligible for Medicaid.
- Whose only source of income is Social Security.
- Have a terminal illness since the long-term care coverage may not be used.

### How to Determine Long-Term Care Coverage Suitability

Steps that insurance producers should undertake to determine suitability:

1. Interview your client and identify their goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs. You should review Pacific Life’s Suitability Standards and discuss them with your client.

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2. Determine whether your client has any existing coverage that will be replaced with the new contract and discuss the values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.
3. Have your client complete the *Long-Term Care Insurance Personal Worksheet*, which must be returned to Pacific Life prior to the insurer's consideration of the applicant for coverage. Both the applicant and the insurance producer must complete the disclosure statement at the bottom of the personal worksheet.

Insurance producers must document their suitability analysis and recommendations and retain such in their files.

### **Long-Term Care Coverage Replacement Considerations**

In addition to the suitability guidance provided, the following considerations apply to the replacement of long-term care coverage:

- How long ago did the client buy the contract they now have? Contracts have improved a great deal, so a relatively new contract may provide better coverage.
- Older long-term care coverage can contain limitations and exclusions that limit the coverage and protection they provide. An old contract with limiting provisions like prior hospitalization, conditional renewability or exclusions for Alzheimer's disease may provide little protection to the insured.
- How much older is the client today than when they bought the existing long-term care coverage? There is an advantage to buying younger and *locking in* at a lower issue age premium.

## Chapter 19: Unauthorized Practice of Law

Your E&O carrier may opt not to defend you if you are found to have acted outside of your covered profession. Therefore, understanding your professional boundaries, your role in the sales process, and your relationship with your client and their legal advisors, may improve your position in a negligence or malpractice claim when the court is determining your liability or an award of damages.

In addition, your clients' financial affairs are becoming more complicated every day. The complexities of current laws and regulations require you to be informed about the legal matters that involve the products you sell and the advice you give. The unauthorized practice of law is difficult to define and varies from state to state. It is usually determined on a case-by-case basis, taking into consideration the facts and circumstances of the particular situation. The following are some guidelines that may help.

### Advice on the Law

**Textbook Definition.** The unauthorized practice of law is when a non-attorney provides advice regarding the application of general rules of law to specific facts as they relate to persons or legal entities. This excludes a discussion of something that is so obvious and common knowledge to everyone involved (e.g., if you cheat on your taxes, you are committing a crime). Many professionals deal with this issue every day without realizing it. The architect who advises a builder that a proposed structure does not conform to the building code or the accountant who gives tax advice are applying general rules of law to specific facts as it relates to a specific person.

**Practical Application.** We believe you can collect information and analyze facts in relation to your client's insurance needs, both immediate and future (such as in an estate or needs analysis). General principles of law can be discussed with clients and their representatives (e.g., the existence of the estate and gift tax exemption amount). If you expand your discussions to describe the application of how those principles apply to a specific factual situation, you need to ask yourself if you are doing so to further analyze the need for, or amount of, an insurance product. For example, you may be able to discuss the pros and cons of the use of an irrevocable life insurance trust, but if you describe how it will specifically impact your client's overall estate plan outside of the economic and insurance aspects, you may have crossed the line into the realm of the attorney.

### Use of Specimen Forms

**Textbook Definition.** Supplying legal forms to others, coupled with instructions/advice and/or representations as to how the form should be filled out, or making changes in legal forms to fit the specific factual needs of others constitutes the rendering of legal services and the practice of law. The fact that the supplier/advisor urges another to consult an attorney does not make the advice anything less than "legal advice" or the services anything less than "legal services."

**Practical Application.** Working with your client's attorney is important. If called to evaluate the legal effect of a document, as it would apply to a specific individual or legal entity, or to provide advice as to the legal consequences of such legal document, ensure you are limiting your comments to only those matters that impact the use of the product, and make them directly to (or in the presence of) the attorney. Otherwise, your advice may constitute legal advice and the unauthorized practice of law. For example, reviewing and commenting on the definition of "disability" in a buy-sell agreement to make sure it matches the definition in the disability insurance product is a valuable service to both your client and their attorney. Nonetheless, it's best to inform the attorney directly as they will know how best to apply the information to the law.

### Insurance Producer as Attorney

If you are a duly licensed attorney, whenever you are acting as a producer, representative or employee of Pacific Life, you cannot practice law (and vice versa). Instead, it is best to work closely with your client's attorney at the earliest possible opportunity. By having the attorney on board when you begin to discuss your client's options, you may avoid situations where your client acts on your legal recommendations without the advice of counsel.

## Chapter 20: Unfair Trade Practices

The Unfair Trade Practices Act, adopted by most states, prohibits certain insurance practices committed in conscious disregard of the applicable laws and regulations, or committed with such frequency to indicate a general business practice to engage in that type of conduct. These rules apply to insurers and their employees, as well as you, as an insurance producer. Any of the following are considered unfair trade practices.

### **Boycott, Coercion, and Intimidation**

Entering into any agreement to commit, or by any concerted action committing any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

### **Company Bashing**

State laws prohibit any form of company bashing. You are company bashing when you:

- focus primarily on the negative attributes of a competitor's financial condition or its products, or the integrity of its representatives rather than on the positive attributes of a company's products and services; or
- make false, deceptive, or malicious statements critical of or derogatory to the financial condition of any insurance company.

### **Defamation**

Making, publishing, disseminating, or circulating, directly or indirectly, any oral or written statement which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure such insurer.

### **Disparaging**

You are disparaging a competitor when you make a written or oral statement which is untruthful, deceptive, or misleading or otherwise unlawful (e.g., company bashing) with regard to your competitors. Such statements are usually intended to dissuade a client from doing business with a competitor by not providing accurate or complete information on which a client may rely for decisions. Disparaging statements are unfair because they are either not factually correct, or not presented in the appropriate context, and often fail to clearly and prominently reference the source of the information provided.

### **Stock Operations and Advisory Board Contracts**

Issuing or delivering agency company stock or other capital stock, or benefit certificates or shares in any corporation, or securities or any other contracts of any kind promising returns and profits as an inducement to purchase insurance.

### **False Information and Advertising**

Making, publishing, disseminating, circulating, or placing before the public in any form (including radio, television, or the Internet) an advertisement, announcement, or statement containing any assertion or representation with respect to the business of insurance or any insurer which is untrue, deceptive or misleading.

### **Failure to Maintain Compliant Records**

Failure to maintain books, records, documents, and other business records in such an order that data regarding complaints, claims, rating, underwriting, and marketing are accessible and retrievable for examination by the insurance commissioner.

For complaints received, this record must indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint.

### **False Statements and Entries**

- Knowingly making, in any form and to any person (including public officials), any false material statement of fact as to the financial condition of an insurer.
- Knowingly making any false entry of a material fact in any book, report or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer, or knowingly making any false material statement to any insurance department official.

### **Misrepresentation and False Advertising of Insurance Products**

The making or using of any estimate, illustration, statement, sales presentation, or comparison that:

- misrepresents the benefits, advantages, conditions or terms of any contract.
- misrepresents the dividends or share of the surplus previously paid or to be received on any contract.
- Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates.
- misrepresents any contract as being shares of stock.
- uses any name or title of any contract or class of contracts misrepresenting the true nature thereof is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates.
- is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any contract.
- is a misrepresentation for the purpose of effecting an assignment of or a loan against any contract.

### **Misrepresentation in Insurance Applications**

Making false or fraudulent statements or representations on or relative to an application for a contract, for the purpose of obtaining a fee, commission, money or other benefit from any provider or individual person.

### **Rebates**

Regardless if allowed by state law, Pacific Life does not allow rebating. This includes:

- Knowingly issuing any insurance contract other than as plainly expressed in the contract issued.
- Paying or giving any valuable consideration as an inducement to acquire a contract, including any refund of premiums, commissions, or consulting fees.

- Giving, selling, or purchasing as inducement to acquiring an insurance contract or in connection therewith, any stocks, bonds or other securities, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

### **Twisting or Churning**

- **Twisting.** Knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance contract or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance contract or to take out a contract of insurance in another insurer.
- **Churning.** The practice whereby contract values in an existing insurance contracts, including, but not limited to, cash, loan values, or dividend values, and in any riders to that contract, are directly or indirectly used to purchase another insurance contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation: (i) without an objectively reasonable basis for believing that the replacement or extraction will result in an actual and demonstrable benefit to the owner; or (ii) in a fashion that is fraudulent, deceptive, or otherwise misleading or that involves a deceptive omission; or (iii) when the applicant is not informed that the contract values, including cash values, dividends, and other assets of the existing contract will be reduced, forfeited, or used in the purchase of the replacing or additional contract, if this is the case; or (iv) without informing the applicant that the replacing or additional contract will not be a paid-up contract or that additional premiums will be due or that a new contestable period will apply and explaining the impact of these differences, if this is the case.

### **Unfair Discrimination**

- Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any insurance contract or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.
- Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, marital status, race, religion, or national origin of the individual; however, this rule does not prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits.

### **Unfair Financial Planning Practices**

The act of an insurance producer in:

- Holding themselves out to the public as a "financial planner," "investment adviser," "consultant," "financial counselor," or any other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when such person is in fact engaged only in the sale of insurance.
  - This is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation when they are only selling insurance. This does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation, or servicing of insurance.
- Engaging in the business of financial planning without disclosing to the client prior to the execution of the agreement indicated below, or solicitation of the sale of a product or service that:
  - they are also an insurance salesperson; and

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- that a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case.
- The disclosure requirement under this paragraph may be met by including it in any disclosure required by federal or state securities law.
- Charging fees other than commissions for financial planning by an insurance producer, unless such fees are based upon a written agreement, signed by the party to be charged in advance of the performance of the services under the agreement. A copy of the agreement must be provided to the party to be charged at the time the agreement is signed by the party. The insurance producer must retain a copy of the agreement for not less than three (3) years after completion of services. Included in the agreement must be the following:
  - The services for which the fee is to be charged must be specifically stated in the agreement.
  - The amount of the fee to be charged or how it will be determined or calculated must be specifically stated in the agreement.
  - The agreement must state that the client is under no obligation to purchase any insurance product through the insurance producer, broker, or consultant.

### Translation Services

In cases where the insured is blind, illiterate, or otherwise unable to read the application (e.g., does not speak or read English), Pacific Life will require that an independent third party read the documents to the insured and certify in writing that they have done so. This is to ensure the insured/annuitant understands that an application is being taken, and that the questions asked and answered have been understood.

The independent third-party witness is chosen by the insured/annuitant as their translator and must not be any of the following:

- Related by blood, marriage, or adoption to the insured/annuitant, the producer, or Pacific Life.
- Paid for by the Producer or Pacific Life.
- A beneficiary on the contract being applied for.

The witness must sign, date, and submit to Pacific Life a letter of declaration along with the application. The letter of declaration must identify the following:

- Name of the independent third-party witness.
- Type of identification the insured/annuitant provided to the witness.
- Language the application was translated into, if other than English.

Additional guidelines:

- The insured must sign in front of two witnesses, one of which may be the producer.
- The words “Witnessed by” must be written next to the insured’s/annuitant’s signature or mark, and both witnesses must sign their names after those words.

**Pacific Life, its affiliates, their distributors, and respective representatives do not provide tax, accounting, or legal advice. Any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor or attorney.**

***Pacific Life is a product provider. It is not a fiduciary and therefore does not give advice or make recommendations regarding insurance or investment products.***



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The home office for Pacific Life & Annuity Company is located in Phoenix, Arizona. The home office for Pacific Life Insurance Company is located in Omaha, Nebraska.

15-52675-00 3/24

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