

Thursday TIP

RegBI and Duty of Care - Compliance

I had a conversation with a member of Securities America's supervision team recently regarding answers on **other considerations**. What else did you consider before the client signed the paperwork for the product you have submitted for review/approval?


First, let me say thank you to all of you for evolving with us through the updated versions of the Duty of Care. As we have seen new requirements and amended the form, you have been doing a great job of improving the quality of how you complete the forms to keep pace with new expectations.

However, supervision has pointed out that regulators continue to have reservations about how associates firm wide are responding to the request to 'provide details regarding all products or services recommended or considered, not just those selected'. For the most part this response is being addressed along the lines of 'we considered mutual funds, alternative investments and advisory accounts but for this client a variable annuity provided the guaranteed income that they desired.' Regulators have said that isn't sufficient to meet the RegBI requirements. You have to go one step further and now indicate which Variable Annuities you considered. Same if you indicated mutual funds, etc.

To simplify, the first question you have to ask is what compensation structure is best for this client – Fee or commission

Then you have to determine the most suitable product type within the appropriate compensation structure to attain the client's objectives within their risk tolerance and suitability requirements.

 Advisory: using a TPAM, or utilizing options within Managed Ops with either a wrap or unwrap fee structure

 Commission: using mutual funds, variable annuities, stocks and bonds, or alternative investments

If you have selected a commission product type, you now have to include information on specific offerings within that category that were considered.

For example, staying with the VA scenario above, you would have to further indicate you considered Jackson and Athene but are electing CUNA detailing the reasons for selecting the specific CUNA over the other two. Be very careful not to have cookie cutter answers. It is okay to have a word document that you copy and paste key phrases like, a variable annuity was selected because the client wanted a guaranteed income. But then you also have to include the personal information for the specific client like, client anticipates spouse will outlive them and want peace of mind knowing they will have a specific income stream in that event.

Remember, definition of considered is 'anything that you as the financial professional thought about when evaluating what to present to the client'. You don't have to actually present the alternate considerations that you ruled not applicable for meeting the client's current needs. But you do have to reference them on the duty of care. And they do need to be investments that you are familiar with and have actually reviewed for consideration, whether mentally or via presentation to the client.

Noting these items will meet the regulatory requirements. Watch next week for a companion piece with suggested best practices on this topic.