



**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY**

**ADVISORY OPINION
2022-01**

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL LICENSEES TRANSACTING INSURANCE BUSINESS IN THE
COMMONWEALTH OF KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER
KENTUCKY DEPARTMENT OF INSURANCE

RE: 806 KAR 12:120 “BEST INTEREST OF THE CONSUMER” REQUIREMENT

DATE: JANUARY 6, 2022

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This Advisory Opinion is intended to provide guidance on the Department’s interpretation of a recent regulatory amendment to 806 KAR 12:120, which requires licensees making a recommendation of an annuity to act in the best interest of the consumer.

The Department has received a variety of industry inquiries about whether the above-referenced “best interest of the consumer” requirement will be applied to licensees on an ongoing basis, such that a licensee could be found to have violated the regulation based upon a future change in the consumer’s personal circumstances.

By issuing this Advisory Opinion, the Department seeks to reaffirm the plain language of the regulation itself, which does not contemplate any such ongoing application. Instead, the regulation states, in relevant part, as follows:

“A licensee, when making a recommendation of an annuity, shall act in the best interest of the consumer **under the circumstances known at the time the recommendation is made**, without placing the licensee’s or the insurer’s financial interest ahead of the consumer’s interest.” (*emphasis added*).

As the regulation states, the “best interest of the consumer” requirement is only applicable under the circumstances known at the time the recommendation is made. It is not applicable on an ongoing basis, and a future change in the consumer’s personal circumstances does not have any impact upon the best interest analysis undertaken by a licensee at the time that an annuity recommendation is made, based on the circumstances known at the time of that recommendation.

In the event of any questions about this Advisory Opinion, please contact the Department at the following telephone number: (502) 564-3630.



Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 6 day of January 2022