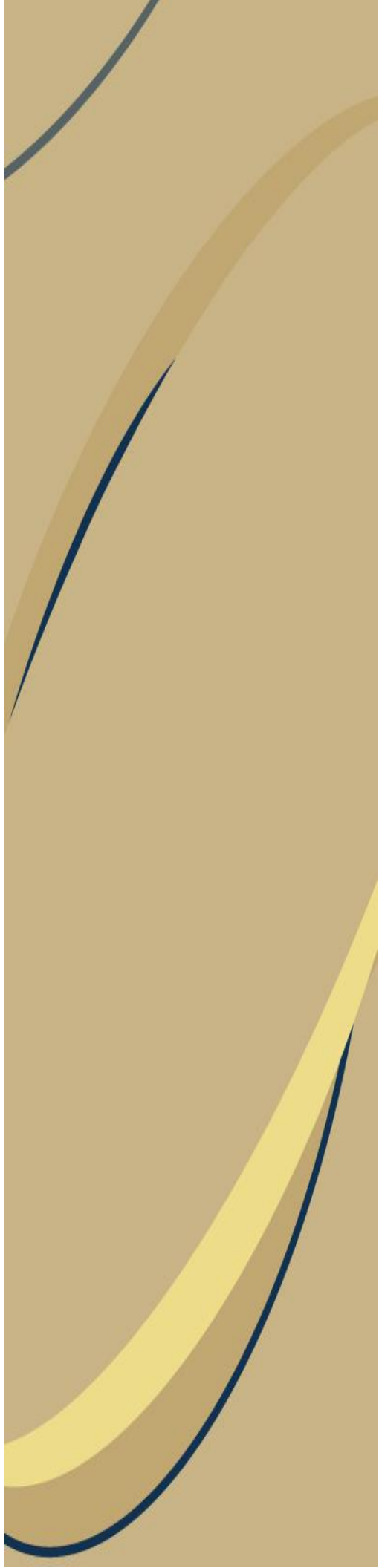




# Life Insurance Agents 2015/16 Compliance Report



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## Executive summary

### Introduction

The Financial Services Commission of Ontario (FSCO) is a regulatory agency established by the Financial Services Commission of Ontario Act, 1997 and is accountable to the Minister of Finance. FSCO's legislative mandate is to provide regulatory services that protect the public interest and enhance public confidence in the sectors it regulates, including the insurance sector.

Life insurance agents are intermediaries who sell life and health insurance products and services on behalf of one or more life and health insurance companies. FSCO is responsible for the monitoring and oversight of approximately 44,000 life insurance agents who are licensed and operating in Ontario.

FSCO supervises life insurance agents through various activities including consumer complaint handling, and receiving and responding to agent suitability reports from insurance companies. FSCO also conducts surveys and desk reviews of life agent practices, reviews the suitability of licensed agents sanctioned by other regulators, and undertakes on-site examinations of individual agents' businesses.

In 2013, FSCO surveyed more than 1,000 licensed life insurance agents in order to obtain further information and understanding about the processes and practices they use at the point of sale to determine suitable life insurance options for clients.

FSCO released the findings of its review in 2014, in its [Life Insurance Agent Suitability Report](#). FSCO advised agents to benchmark themselves against the aggregate results in the report as a way to self-evaluate their own practices and identify areas for improvement. FSCO also encouraged agents to refer to the Canadian Life and Health Insurance Association's (CLHIA) reference document, [The Approach: Servicing the Client Through Needs-Based Sales Practices](#), for a guideline on industry best practices, and reminded agents of their obligations to comply with legislative requirements.

In 2015/16, FSCO undertook 214 on-site examinations of life insurance agents to assess adherence to those obligations and guidelines. Additionally, the exams sought to confirm that agents are adhering to the requirements of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the Personal Information Protection and Electronic Documents Act (PIPEDA).

The findings from the 2015/16 examinations were compared to the results of the Life Insurance Product Suitability Review to verify practices and whether there were any improvements.

### Summary of findings

Overall, FSCO found a good level of compliance during its 2015/16 examinations:

- 98 percent rate of compliance with ongoing Errors and Omissions (E&O) Insurance;
- Life Insurance Agents were mostly compliant with legal written disclosure requirements, however there were still some who did not consistently comply with the requirements in all the transactions FSCO reviewed;
- improved rate of compliance with industry best practices in maintaining written documentation of agents' interaction with clients;
- 80 percent rate of adherence to FINTRAC requirements; and
- 83 percent rate of adherence to PIPEDA requirements.

The five most common findings were:

- needs assessment not documented;
- letter of engagement not prepared;
- failure to disclose in writing all insurers that the agent represents;
- conflict or potential conflict of interest not disclosed in writing; and
- no access to FINTRAC policy and procedures.

FSCO's findings are discussed in greater detail beginning on page five of this report.

### **Regulatory action**

FSCO is committed to consumer protection and will pursue regulatory action where there is evidence of non-compliance with the Insurance Act and Regulations and/or industry best practices. Regulatory action can range from imposing an administrative monetary penalty to licence revocation, and can include a combination of enforcement actions. FSCO's regulatory decisions are based on the specific facts and circumstances of each case.

With respect to the 2015/16 life insurance agent examinations, specific cases were escalated for further regulatory action where FSCO noted failure to maintain E&O insurance coverage, and/or for providing false and misleading information to the Superintendent of Financial Services. As an example of the enforcement action FSCO has taken for instances of non-compliance with the above requirements, FSCO imposed an administrative monetary penalty in the amount of \$1,500 for an agent's failure to maintain E&O insurance coverage.

In other cases where life agents were not able to demonstrate that they consistently complied with the legislative requirements and/or industry best practice standards, FSCO sent a letter summarizing its findings and recommendations, including any remedial action the agent was required to take. Where there were multiple disclosure issues identified in FSCO's review, agents were asked to respond to the recommendations and confirm that they have implemented the required remedial plans within a specified period of time.

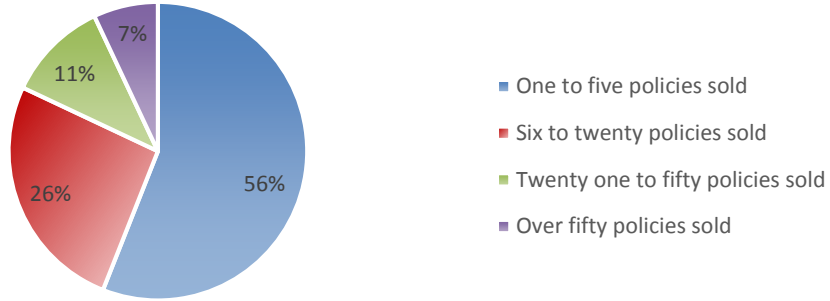
Over the next year, FSCO will conduct follow up examinations to verify that these agents have addressed the deficiencies identified in the 2015/16 examination, and have established protocols to ensure consistent compliance with the Insurance Act and Regulations and/or industry best practice standards.

### **About the 2015/16 examinations**

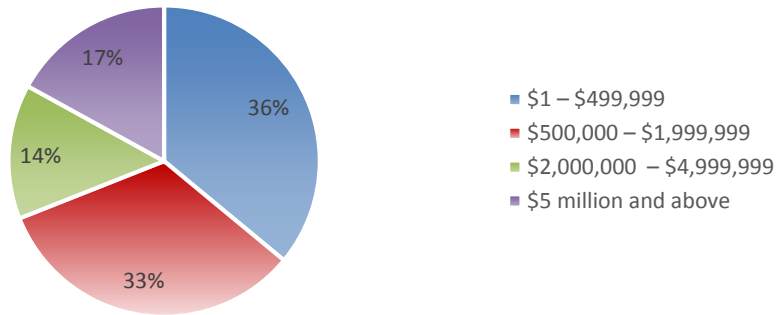
From April 2015 to March 2016, FSCO conducted on-site examinations of 214 life insurance agents. The exams specifically targeted agents that FSCO had previously identified as having a high risk of non-compliance.

Of the agents examined, 72 percent had more than 10 years experience; 25 percent had between two and 10 years experience; and the remaining 3 percent had less than two years experience. These agents sold a variety of products, including term, whole and universal life, as well as segregated funds policies. The following charts show the number of policies the agents sold over the past year, the face values of the policies, and the agents' distribution channels.

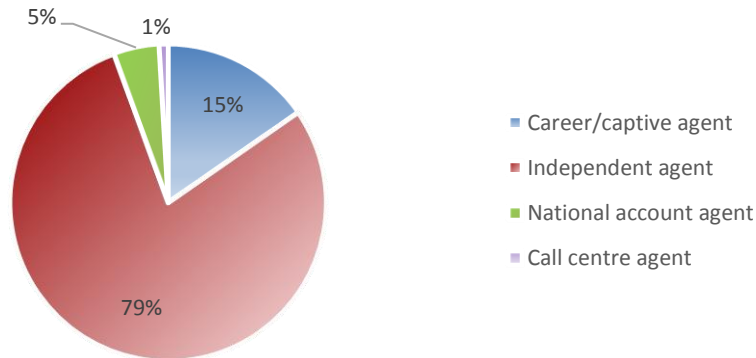
**Chart 1: Number of Policies Sold**



**Chart 2: Face Values of Policies Sold**



**Chart 3: Life Insurance Agents Examined by Distribution Channel<sup>1</sup>**



<sup>1</sup> • Career/captive agent: only allowed to sell the products of one insurance company.  
 • Independent agent: contract with MGA for access to insurers that would not be available on an individual contract basis, however some may have direct access to insurers.  
 • National account agent: agent works for an investment dealer that has contracts with insurers.  
 • Call centre agent: sells products through an inbound call centre operated by an insurer.

## Examination criteria and detailed findings

During the on-site examinations, FSCO looked specifically for evidence of compliance with the Insurance Act and its regulations, industry best practices, FINTRAC guidelines, and PIPEDA requirements.

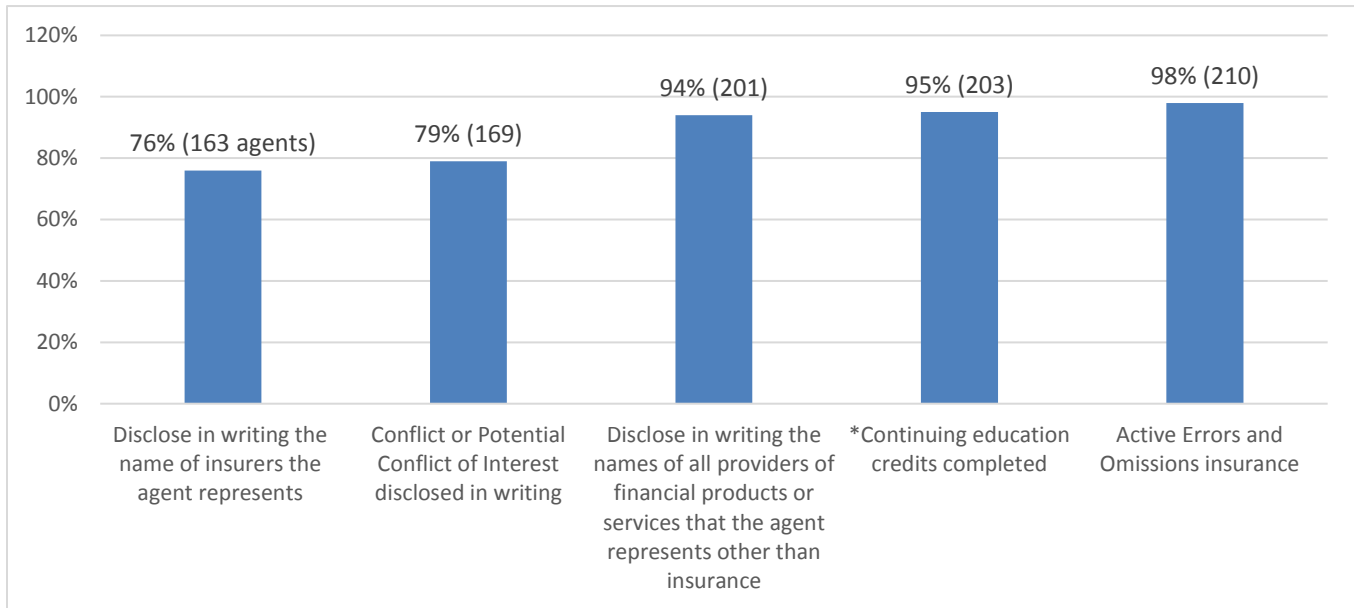
### Insurance Act and its regulations

Life insurance agents were examined for their compliance with the following requirements:

- Complete at least 30 hours every two years of continuing education acceptable to the Superintendent in respect of life insurance ([section 14 of Ontario Regulation 347/04](#)).
- Provide the Superintendent with any new contact information (e.g., mailing address, email address, telephone/fax number) within five days of the change ([section 5.1 of Ontario Regulation 347/04](#)).
- Maintain E&O insurance in a form approved by the Superintendent, in an amount of at least \$1 million with respect to any one occurrence and with extended coverage for loss resulting from fraudulent acts ([section 13\(a\) of Ontario Regulation 347/04](#)).
- Disclose in writing the names of all the insurers that the individual represents to every prospective insured and to every insured who makes an application to renew or replace a policy of life insurance ([section 15\(1\) of Ontario Regulation 347/04](#)).
- Disclose in writing the names of all the providers of financial products or services that the individual represents to every prospective purchaser of a financial product or service other than insurance ([section 15\(2\) of Ontario Regulation 347/04](#)).
- Disclose in writing to a client or prospective client any conflict of interest or potential conflict of interest of the agent that is associated with a transaction or recommendation ([section 16 of Ontario Regulation 347/04](#)).
- Obtain (as part of an application for a contract of insurance) a statement signed by the applicant, which indicates whether replacement of a contract of life insurance is intended ([section 2\(1\) of Ontario Regulation 674: Replacement of Life Insurance Contracts](#)).
- Where the replacement of a contract of life insurance is intended and prior to accepting an application for a contract of insurance, complete and sign:
  - a life insurance replacement declaration in a form approved by the Superintendent, and
  - a written explanation of the advantages and disadvantages of replacing the contract of life insurance ([Section 2\(2\) 2 of Ontario Regulation 674: Replacement of Life Insurance Contracts](#))

Generally, the results of the examination showed a high rate of compliance with E&O and continuing education requirements and also showed a significant improvement in disclosures of conflict or potential conflicts of interest, from a 46 percent rate of compliance in the Life Insurance Product Suitability Review in 2013, to a 79 percent rate of compliance in the on-site examinations in 2015/16. The following chart provides an overview of FSCO's key findings:

## Chart 4: Key areas of compliance with the Insurance Act and regulations (as a percentage of agents examined)



\*Finding shows that 5% of agents had not completed the requirement at time of our review. These agents are being monitored to ensure they have completed the 30 hours of continuing education as required when they renew their licence.

FSCO has noted that written disclosure of the names of insurers which the agent represents, as well as written disclosure of conflicts or potential conflicts of interest, are areas in need of greater improvement. These are particularly important components of the sales transaction, given that appropriate disclosures allow for consumers to make informed decisions. Agents who did not comply with these disclosure requirements were unable to demonstrate how they met the requirements on a consistent basis. FSCO expects that agents understand and adhere to all requirements of the Act and its regulations consistently when transacting business.

Going forward, where FSCO identifies inconsistent compliance with the legislated requirements, noted instances of non-compliance will be considered for enforcement action.

### Compliance with industry best practices

Both FSCO and CLHIA have provided guidance and information on how to identify and disclose conflicts and potential conflicts of interest. FSCO reviewed agents' sales processes and related documentation to determine if their practices adhered to the principles set out by both organizations.

The following documentation was reviewed:

- disclosure documents;
- letters of engagement;
- needs assessments;
- policy illustrations;
- insurer-approved marketing materials/brochures; and
- records detailing client discussions, including recommendations and advice.

The examinations showed that a needs assessment was being documented 71 percent of the time. FSCO noted there is no improvement in this area from the Product Suitability Review in 2013, where the rate of occurrence, from a much larger sample of agents, was 72 percent. As agents have not modified behaviours over the past two years through their own initiatives, FSCO will be required to commence enforcement actions to reinforce that product suitability and disclosures are an important part in the fair treatment of consumers.

FSCO's [2014 Life Insurance Agent Suitability Report](#) showed a 53 percent compliance rate for agents' "documentation of sales activities". For the 2015/16 examinations, FSCO reviewed the documentation requirements in more specific detail, and generally found improvement:

- the letter of engagement, which clarifies the services that the client expects the advisor will provide in the immediate transaction and ongoing relationship, was prepared 71 percent of the time;
- records of client discussions, which should be maintained in the client files so it is clear how the life agent's recommendations link to the client's circumstances, were documented 81 percent of the time; and
- policy illustrations, which provide the client with relevant and engaging information to help them make their decision, were retained 86 percent of the time.

Best practices are an important component to the sales process which aid consumers in making informed decisions, while encouraging agents to conduct due diligence through record keeping. As a monitoring initiative, FSCO will assess adherence to best practice recommendations made at individual examinations through follow-up reviews of agents in 2016/17, using a risk based approach.

It is FSCO's continued expectation that life insurance agents' sales practices follow the principles described in the CLHIA's reference document, and the relevant FSCO communications. If best practices are not adopted, then FSCO will be required to consider recommendations to government for regulations to ensure the fair treatment of consumers.

### Chart 5: Best Practices – Top Four Findings

Top four findings	Rate of compliance
	2015/16 life insurance agent onsite examinations: 214 exams
Needs assessment documented	71%
Letter of engagement prepared	71%
Records of client discussions documented	81%
Policy illustrations retained	86%



## Compliance with FINTRAC and PIPEDA

FINTRAC is the agency responsible for the collection, analysis and disclosure of information to assist in the detection, prevention and deterrence of money laundering and terrorist financing in Canada and abroad. PIPEDA sets out ground rules for how private-sector organizations may collect, use or disclose personal information in the course of commercial activities.

A review was performed to assess whether life insurance agents have established policies and procedures to comply with FINTRAC guidelines and PIPEDA requirements.

FSCO's examinations determined that 80 percent of life insurance agents had FINTRAC requirements reflected in their policies and procedures, and a further 83 percent had PIPEDA requirements reflected in their policies and procedures. FSCO determined that the non-compliant agents were either unable to demonstrate how they met the requirements, or were simply unaware of the legislative requirements. Therefore, greater levels of awareness need to be achieved.

To assess adherence with recommendations made at the time of examination, FSCO will follow-up with agents, through risk based approaches, to verify that revised or established policies and procedures reflect compliance with FINTRAC and PIPEDA.

FSCO expects life insurance agents to be aware of their obligations under [Canada's Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#). This includes client identification, record keeping, and reporting of certain transactions. Developed by the CLHIA, the [Guidance Manual to Combat Money Laundering and Terrorist Financing](#) has been designed to assist life insurance agents and brokers in complying with their legal obligations under Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime.

FSCO will report incidents of non-compliance to the respective agencies.

## Conclusion and next steps

All life insurance agents must meet their legal requirements under the Insurance Act and Regulations, and obligations under PIPEDA and FINTRAC. In addition, adherence to best practices is also critical to ensuring the fair treatment of consumers. With this in mind, FSCO will not only take enforcement action where non-compliance is found, but will look to monitor and to make recommendations to those agents who fail to implement best practices. If this gap persists, FSCO will consider recommendations to the government about regulations that support the fair treatment of consumers.

Life agents should benchmark themselves against the aggregate results in the [Life Insurance Agent Suitability Report](#) and this report, as a way to self-evaluate their own practices and identify areas for improvement.

Agents are encouraged to visit the [insurance pages on FSCO's website](#) to learn more about their obligations.