

# R 2023-05 Best Interest Standard for Annuities

---

Pre-publication Draft | Wednesday August 9, 2023

Comments due to OIC at [RulesCoordinator@oic.wa.gov](mailto:RulesCoordinator@oic.wa.gov) by Wednesday, August 23, 2023

---

## WAC 284-17-265

### Sales of annuities—producer training.

(1) A person may not sell, solicit, or negotiate the sale of an annuity product unless he or she is ~~appropriately~~ licensed as an insurance producer with the life insurance line of authority and has successfully completed the annuity suitability best interest standard training that meets the requirements of this section.

(2)(a) After ~~March 29, 2012~~ January 1, 2024, ~~prior to~~ before selling, soliciting, or negotiating the sale of annuity products, all insurance producers must complete a one-time, four ~~hour~~ credit annuity suitability best interest standard training course approved by the commissioner and provided by a state approved insurance education provider, which meets the requirements in this section ~~an insurance education provider approved in this state~~.

~~(b) Insurance producers who hold a life insurance line of authority on March 29, 2012, and who desire to sell annuities must complete the requirements of this section by September 29, 2012. If a person has completed an annuity suitability training course before January 1, 2024, but that course did not include the best interest standards, then the person must complete an additional 1-hour (or credit) course, approved by the commissioner and provided by a state approved insurance education provider, which meets the requirements in this section, within six months after January 1, 2024.~~

(c) Persons who obtain a life insurance line of authority on or after January 1, 2024, ~~March 29, 2012~~, may not sell, solicit, or negotiate the sale of an annuity product until the annuity training course has been completed.

(3)(a) The annuity suitability best interest standard training required under this section shall include information on the following topics:

- (i) The types of annuities and various classifications of annuities;
- (ii) Identification of the parties to an annuity;
- (iii) How fixed, variable, and indexed annuity contract provisions affect consumers;

(iv) The application of income taxation of qualified and nonqualified annuities;

(v) The primary uses of annuities; and

(vi) Appropriate standards of conduct, sales practices, replacement, and disclosure requirements.

(b) The training required in this section must be sufficient to qualify for at least four continuing education credits.

(c) The training required in this section may be completed by either classroom instruction, or self-study, or webinar in accordance with WAC 284-17-220 through 284-17-256.

(d) The insurance producer education required by this section must not include training that is issuer or company product specific or includes any sales or marketing information and materials.

(e) Approved providers offering the annuity suitability best interest standard education required by this section must administer the course, issue certificates of completion, report completed training to the commissioner, and maintain records as required by WAC 284-17-270 through 284-17-310.

(4)(a) Resident insurance producers that complete the required training of this section and which are approved in this state may count those credits toward fulfillment of their Washington CE requirement.

(b) A resident or nonresident producer completing the required annuity suitability best interest standard training of this section in another state which has adopted the annuity suitability training requirements in this section shall be deemed as satisfying this state's requirement. A resident insurance producer completing the required training of this section in another state will not receive Washington CE credit, unless the provider and course are approved by Washington.

~~(c) If a resident insurance producer wishes to apply course credits for the required annuity suitability training offered in another state and the course is not otherwise approved for continuing education credit in this state, the training may qualify for individual course credit subject to WAC 284-17-244.~~

(5) Each insurer must verify that an insurance producer has completed the annuity training course required in this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or ~~obtaining~~ reports provided by commissioner-sponsored database systems or vendors, or reports from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

(6) Insurance producers who have completed the annuity suitability best interest standard training requirements of this section in a state other than Washington which has adopted the

annuity suitability best interest standard training requirements in this section prior to before January 1, 2024, are deemed to have satisfied the training requirements of this section.

## **WAC 284-23-390**

### **Duties of insurers and insurance producers.**

(1) For purposes of this section, "consumer profile information suitability information" means information that is reasonably appropriate to determine the suitability of whether a recommendation suitably addresses the consumer's financial situation, insurance needs and financial objectives, including, at a minimum, the following:

(a) Age;

(b) Annual income;

(c) Financial situation and needs, including the financial resources used for the funding of the annuity debts and other obligations;

(d) Financial experience;

(e) Insurance needs;

(f) Financial objectives;

(g) Intended use of the annuity;

(h) Financial time horizon;

(i) Existing assets or financial products, including investment, annuity and life-insurance holdings;

(j) Liquidity needs;

(k) Liquid net worth;

(l) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;

(m) Financial resources used to fund the annuity; and

(n) Tax status.

~~(2) In addition to the requirements in RCW 48.23.015, insurers and insurance producers must have reasonable grounds to believe the following requirements in recommending and executing a purchase or exchange of an annuity:~~

~~(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;~~

~~(b) The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;~~

~~(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and~~

~~(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:~~

~~(i) 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;~~

~~(ii) The consumer would benefit from product enhancements and improvements; and~~

~~(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.~~

~~(3) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.~~

~~(4) An insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

~~(5) An insurer's issuance of an annuity subject to subsection (2) of this section must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.~~

~~(6) An insurance producer or, where no insurance producer is involved, the responsible insurer representative must at the time of sale:~~

~~(a) Make a record of any recommendation subject to this section;~~

~~(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and~~

~~(c) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.~~

~~(27) In addition to the requirements in RCW [48.23.015](#)(4) an insurer must:~~

(a) Establish and mMaintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

(b) Establish and maintain standards for insurance producer product training and must establish and maintain reasonable procedures to require its insurance producers to comply with the requirements of WAC 284-17-265;

(c) Provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(d) Establish and mMaintain procedures for the review of each recommendation ~~prior to~~before issuance of an annuity that are designed to ensure ~~that~~ there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives~~a recommendation is suitable~~. ~~Such~~The review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. ~~Such an~~The electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) Establish and mMaintain reasonable procedures to detect recommendations that are not in compliance with RCW 48.23.015(3), 48.23.015(4), subsection (5) of this section, and RCW 48.23.015(6). This may include, but is not limited to, confirmation of the consumer's consumer profile suitability-information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subsection ~~(8)(e)~~ prevents an insurer from complying with this subsection ~~(8)(e)~~ by applying sampling procedures, or by confirming the consumer profile suitability-information or other required information under this section after issuance or delivery of the annuity; ~~and~~

(f) The insurer shall establish and maintain reasonable procedures to assess, before or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;

(g) The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(h) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

(i) Annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details the review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(38)(a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under RCW 48.23.015(54). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to RCW 48.23.015(76) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with (b) of this subsection.

(b) An insurer's supervision system must include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(4) An insurer is not required to include in its system of supervision:

(a) A producer's recommendations to consumers of products other than the annuities offered by the insurer; or

(b) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

(59) Neither an insurer nor an An-insurance producer shall ~~not~~ dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of the consumer profilesuitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

## **WAC 284-23-410**

### **Definition of replacement.**

"Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing insurance producer, or to the proposing insurer if there is no insurance producer, that by reason of ~~thesuch~~ transaction, an existing life insurance~~or~~, annuity, or other insurance policy has been or is to be:

(1) Lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as 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;

(4) Reissued with any reduction in cash value; or

(5) Used in a financed purchase or pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent of the loan value set forth in the policy.