

**WAC 284-23-390 Duties of insurers and insurance producers. (1)**

For purposes of this section, "suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

- (a) Age;
- (b) Annual income;
- (c) Financial situation and needs, including the financial resources used for the funding of the annuity;
- (d) Financial experience;
- (e) Financial objectives;
- (f) Intended use of the annuity;
- (g) Financial time horizon;
- (h) Existing assets, including investment and life insurance holdings;
- (i) Liquidity needs;
- (j) Liquid net worth;
- (k) Risk tolerance; and
- (l) 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.

(7) In addition to the requirements in RCW 48.23.015(4) an insurer must:

(a) Maintain 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 standards for insurance producer product training and must 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) Maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such 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 electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) Maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters 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 suitability information after issuance or delivery of the annuity; and

(f) Annually provide a 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.

(8)(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(4). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to RCW 48.23.015(6) 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.

(9) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

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

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

[Statutory Authority: RCW 48.02.060 and 48.23.015(8). WSR 12-06-019 (Matter No. R 2011-23), § 284-23-390, filed 2/28/12, effective 3/30/12.]