

## WSR 23-19-089

## PROPOSED RULES

## OFFICE OF THE

## INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2023-05—Filed September 20, 2023, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-111.

Title of Rule and Other Identifying Information: Annuity best interest standard, implementing chapter 64, Laws of 2023.

Hearing Location(s): On Tuesday, October 24, 2023, at 9:00 a.m. Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/best-interest-standard-annuities-r-2023-05>. Written comments are due to OIC by close of business (5 p.m. PST) on Wednesday, October 25, 2023. Written comments can be emailed to RulesCoordinator@oic.wa.gov.

Date of Intended Adoption: November 7, 2023.

Submit Written Comments to: Michael Walker, P.O. Box 40260, Olympia, WA 98504-0260, email RulesCoordinator@oic.wa.gov, fax 360-586-3109, by Wednesday, October 25, 2023.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by Wednesday, October 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 1120, concerning the best interest standard for annuity transactions, passed during the 68th legislative session. This new law will update Washington's suitability standard for annuity transactions to a best interest threshold and aligns with updates the National Association of Insurance Commissioners made to Model Regulation #275 on Annuity Transactions. The new law requires producers, and insurers where no producer is involved, to act in the best interests of their consumers when recommending annuities, complete annuity specific training, and to establish and maintain recommendation supervision systems that ensure the insurance needs and financial objectives of consumers are effectively addressed. Existing rules will be revised accordingly to update training requirements, terminology, and proper annuity transaction protocols.

Reasons Supporting Proposal: This rule making will achieve alignment between the regulations in the insurance code with the new law in chapter 64, Laws of 2023, and updates to NAIC Model Regulation #275. OIC rule making will update training requirements, revise the prior "suitability standard" with the new "best interest" threshold (including consumer profile information), and generally achieve alignment between the applicable authorities, including terminology.

Statutory Authority for Adoption: RCW 48.02.060(3) and 48.23.015(8).

Statute Being Implemented: Chapter 64, Laws of 2023.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Walker, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7036; Implementation: Todd Dixon, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7262; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7050.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), this rule will be exempt from the requirements of the collective bargaining agreements. This section indicates that exemptions apply to "*[r]ules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.*" This rule making is attempting to adopt or incorporate by reference without material change, Washington law in chapter 64, Laws of 2023, as well as national consensus codes that generally establish industry standards with NAIC Model Regulation #275, Suitability in Annuity Transactions, and the regulations being promulgated will regulate the same subject matter and conduct as the adopting or incorporating rule, the best interest standards for annuity transactions.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 34.05.310 (4)(c).

Explanation of exemptions: Under RCW 19.85.025(3), this rule will be exempt from the requirements of the Washington Regulatory Fairness Act (RFA) and small business economic impact statement (SBEIS). The RFA and SBEIS requirements do not apply to the rules referenced in RCW 34.05.310 (4)(C), which are "*[r]ules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.*" This rule making is attempting to adopt or incorporate by reference without material change, Washington law in chapter 64, Laws of 2023, as well as national consensus codes that generally establish industry standards with NAIC Model Regulation #275, Suitability in Annuity Transactions, and the regulations being promulgated will regulate the same subject matter and conduct as the adopting or incorporating rule, the best interest standards for annuity transactions.

Scope of exemption for rule proposal:

Is fully exempt.

September 20, 2023  
Mike Kreidler

## OTS-4932.1

AMENDATORY SECTION (Amending WSR 12-19-100, filed 9/19/12, effective 10/20/12)

**WAC 284-17-265 Sales of annuities—((Insurance)) 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))~~ a producer with the life insurance line of authority and has successfully completed the annuity suitability training, which includes the best interest standards, that meets the requirements of this section.

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

(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 either the four credit course in (a) of this section, or an additional one-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 ~~((March 29, 2012))~~ January 1, 2024, may not sell, solicit, or negotiate the sale of an annuity product until the annuity suitability training course, with best interest standards, has been completed.

(3) (a) The annuity suitability 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 sales practices, replacement, and disclosure requirements; and

(vii) Best interest standards.

(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 accord-

ance with WAC (~~(284-17-220 through 284-17-256)~~) 284-17-210 through 284-17-286.

(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 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~~) 284-17-312.

(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~~) continuing education requirement.

(b) A resident or nonresident producer completing the required annuity suitability training of this section, which includes the best interest standards, in another state (~~which has adopted the annuity suitability requirement~~) shall be deemed as satisfying this state's requirement. A resident producer completing the required training of this section, before January 1, 2024, in another state will not receive Washington continuing education 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~~) a producer has completed the annuity suitability training (~~course~~), with best interest standards, 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 training requirements of this section in a state other than Washington which has adopted the annuity suitability requirement prior to March 29, 2012, are deemed to have satisfied the training requirements of this section.~~) For purposes of this section, "producer" has the meaning set forth in RCW 48.23.015, unless the context clearly requires otherwise.

(7) A producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. This requirement is in addition to and not in lieu of the annuity suitability training, with best interest standards, required by this section.

[Statutory Authority: RCW 48.02.060. WSR 12-19-100 (Matter No. R 2012-20), § 284-17-265, filed 9/19/12, effective 10/20/12. Statutory Authority: RCW 48.02.060 and 48.23.015(8). WSR 12-06-019 (Matter No. R 2011-23), § 284-17-265, filed 2/28/12, effective 3/30/12.]

OTS-4933.1

AMENDATORY SECTION (Amending WSR 12-06-019, filed 2/28/12, effective 3/30/12)

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

(1) For purposes of this section, "producer" has the meaning set forth in RCW 48.23.015, unless the context clearly requires otherwise.

~~(2) 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-)) "consumer profile information" has the meaning set forth in RCW 48.23.015.~~

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

(a) Establish and 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 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 maintain 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 ((a recommendation is suitable. Such)) the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. 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 maintain reasonable procedures to detect recommendations that are not ((suitable)) in compliance with RCW 48.23.015 (3), (4), and (6), and subsection (6) of this section. This may include, but is not limited to, confirmation of ((consumer suitability)) the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring. Noth-

ing in this subsection (~~((8)-(e))~~) prevents an insurer from complying with this subsection (~~((8)-(e))~~) by applying sampling procedures, or by confirming (~~(suitability)~~) the consumer profile information or other required information under this section after issuance or delivery of the annuity; (~~and~~)

(f) 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) Establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(h) Establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subsection (3)(h) 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.

~~((8))~~ (4) 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))~~) (5). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to RCW 48.23.015(~~((6))~~) (7) 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)~~ (5) 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.

(6) Neither an insurer nor a producer may dissuade, or attempt to dissuade, a consumer from:

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

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(7) Appendices A, B, and C, related to the disclosure and documentation obligations referenced in RCW 48.23.015 are those provided

by the National Association of Insurance Commissioner's Suitability in Annuity Transactions Model Regulation (#275), as published on the commissioner's website.

[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.]

AMENDATORY SECTION (Amending WSR 11-01-159, filed 12/22/10, effective 1/22/11)

**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 ~~((such))~~ the transaction, existing life insurance or annuity 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))~~ 25 percent of the loan value set forth in the policy.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-410, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-410, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-410, filed 5/2/80, effective 10/1/80.]