



Mike Kreidler - Insurance Commissioner

As required by

The Washington State Administrative Procedure Act

Chapter 34.05 RCW

Matter No. **R 2023-05**

**CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS
SUMMARY; RULE DEVELOPMENT PROCESS; AND
IMPLEMENTATION PLAN**

Relating to the adoption of

Best Interest Standards for Annuities – Implementing Chapter 64, Laws of 2023

November 7, 2023

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Section 1: Introduction

Revised Code of Washington (RCW) 34.05.325(6) requires the Office of the Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption. The CES shall:

1. Identify the Insurance Commissioner's reason's for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences;
3. Summarize and respond to all comments received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the Insurance Commissioner's reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

The Insurance Commissioner is adopting rules related to the implementation of Chapter 64, Laws of 2023. HB 1120 (2023-24) concerning the best interest standard for annuity transactions passed in Washington's 68th Legislative Session. This legislation transitions Washington from a suitability standard for annuity transactions to a best interest threshold and aligns with updates the National Association of Insurance Commissioners (NAIC) made to Model Regulation # 275. 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.

Rulemaking is necessary to align the regulations in the Washington Administrative Code with the new provisions provided by Chapter 64, Laws of 2023, and the updated NAIC Model Regulation # 275. This alignment of authorities requires rulemaking to amend training requirements, revise the prior 'suitability standard' with the new 'best interest' threshold, and update terminology. These rules will facilitate implementation of the legislation by ensuring that all affected entities understand their rights and obligations under the new legal framework.

Section 3: Rule Development Process

The CR-101 (Preproposal Statement of Inquiry) for this rulemaking was filed with the Washington State Register (WSR) on Wednesday, July 19, 2023 (WSR 23-15-111). The comment period for the CR-101 was open for two weeks, closing on

Wednesday, August 2, 2023. Two written comments were received in response to the CR-101.

A prepublication draft was published on Wednesday, August 9, 2023, with a two-week comment period ending on Wednesday, August 23, 2023. Four written comments were received in response to the prepublication draft.

The CR-102 (Proposed Rule Making) was filed with the WSR on Wednesday, September 20, 2023 (WSR 23-19-089). The Insurance Commissioner accepted comments through Wednesday, October 25, 2023. Four written comments were received in response to the CR-102.

The Insurance Commissioner held a public hearing on the proposed rule text on Tuesday, October 24, 2023, at 9:00 AM; the public hearing was administered by Sr. Policy Analyst, Michael Walker, as a virtual meeting. Testimony was presented by the Federation of Americans for Consumer Choice and CEO Kim O'Brien, which indicated support for the proposed rule language and respect for OIC's rulemaking process.

The CR-103 (Rule-Making Order) for this rulemaking was submitted to the Office of the Code Reviser on Tuesday, November 7, 2023, for agency adoption.

Section 4: Differences Between Proposed and Final Rule

None.

Section 5: Responsiveness Summary

Written Comments	Agency Response
CR-101	
<p>NAIC Model # 275 deleted the term insurance because the updates for the new standards pertain to any financial professional or producer who seeks to be regulated by the updated requirements. Suggests striking the phrase 'insurance producer', replacing it with only producer throughout WAC 284-17-265, as defined by legislation.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p> <p>The rule now defines producer, for purposes of the affected sections, to have the meaning set forth in RCW 48.23.015, unless context clearly requires otherwise. WAC 284-17-265(6) and 284-23-390(1) provide <i>"[f]or purposes of this section, "producer" has the meaning set forth in RCW 48.23.015, unless the context clearly requires otherwise."</i></p>
<p>The term consumer profile information should be defined in legislation and not in rule.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p>

	<p>The draft rule language has been revised to incorporate by reference the statutory defined term for Consumer Profile Information. WAC 284-23-390(2) provides <i>“[f]or purposes of this section, “consumer profile information” has the meaning set forth in RCW 48.23.015.”</i></p>
<p>Specifically, it is our hope and expectation that Washington will adopt the provisions of NAIC Model Regulation Section 6.C. – in particular subsections 2 through 4 – to replace the existing administrative code sections found in WAC 284-23-390.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The commenter requests NAIC model provisions that were captured and codified in RCW 48.23.015 to also be placed in the rule.</p>
<p>We agree with the statement in the pre-proposal that OIC rulemaking is needed to “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.” In addition, the effective operation of the statute relies on several disclosure forms that are Appendices to the NAIC model rule. We strongly support including adoption of these Appendices in the rulemaking.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p> <p>The draft rule language has been revised to reference the appendices in RCW 48.23.015, as well as NAIC’s <i>Suitability in Annuity Transactions Model Regulation (#275)</i>.</p> <p>Under WAC 284-23-390(7), <i>“[a]ppendices 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.”</i></p>
Prepublication Draft	
<p>It is particularly helpful that provisions from NAIC Model Regulation Section 6.C. subsections 2 to 4 relating to insurer supervision have been incorporated into the corresponding rule WAC 284-23-390. Those sections were carefully crafted to complement other parts of these newly updated requirements and help ensure the overall construct of the newly updated rules are workable.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p>
<p>One suggestion is to promulgate another rule that would specify content of the required disclosures referenced in the updated statutes consistent with the NAIC Model Regulation where those disclosure</p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p>

<p>are set forth in Appendices A, B, and C. Such promulgation, or incorporation of the NAIC model forms by reference, would ensure that Washington is consistent with the NAIC Model Regulation in regard to disclosure requirements and provide certainty to regulated parties both now and into the future.</p>	<p>The draft rule language has been revised to reference the appendices in RCW 48.23.015, as well as NAIC's <i>Suitability in Annuity Transactions Model Regulation</i> (#275).</p> <p>Under WAC 284-23-390(7), “[a]ppendices 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 <i>Suitability in Annuity Transactions Model Regulation</i> (#275), as published on the commissioner’s website.”</p>
<p>“Producer” has supplanted “insurance producer” in Washington statute. In conformity with the statute, R 2023-05 should use the term “producer” in lieu of “insurance producer” throughout the draft.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p> <p>The rule now defines producer, for purposes of the affected sections, to have the meaning set forth in RCW 48.23.015, unless context clearly requires otherwise. WAC 284-17-265(6) and 284-23-390(1) provide “[f]or purposes of this section, “producer” has the meaning set forth in RCW 48.23.015, unless the context clearly requires otherwise.”</p>
<p>WAC 284-23-390, the definition of “consumer profile information” should be deleted. It is redundant and unnecessary since it is already in the statute. To repeat it in WAC 284-23-390 could lead to confusion.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p> <p>The draft rule language has been revised to incorporate by reference the statutory defined term for Consumer Profile Information. WAC 284-23-390(2) provides “[f]or purposes of this section, “consumer profile information” has the meaning set forth in RCW 48.23.015.”</p>
<p>WAC 284-23-410 only contains a definition of “Replacement”. Again, this definition is contained in the statute so it is both redundant and unnecessary to put it in WAC 284-23-410. Since WAC 284-23-410 contains no other text, under the new statute the entire section can be deleted from the Washington Administrative Code.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The law in RCW 48.23.015 only applies to annuities, whereas this section of rules applies to replacements of annuities and life insurance policies. The definition of replacement in this rule is harmonized and aligned with the definitions from NAIC MDL 613 (life insurance and annuity</p>

	<p>replacement) and NAIC MDL 275 (Annuities) for the term replacement.</p> <p>The rule cannot not simply cite or reference the definition in law, because the statutory term does not consider life insurance policies, as occurs with the existing regulations.</p>
<p>There is important text from the NAIC Model missing from the draft rule. ACLI respectfully requests that the following be added to WAC 284-23-390 as a new WAC 284-23-390(7):</p> <p><i>“The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.”</i></p> <p>This language acknowledges that other training—including that for broker-dealers or registered reps— can satisfy some parts of the training requirements in this rule and the new statute. Some members rely on this recognition, so it would be good to have it added to WAC 284-23-390 as a new subsection (7).</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The final rule provides clear thresholds for compliance and satisfying the annuity suitability training requirements in WAC 284-17-265. The final rule language in this section includes detailed provisions on meeting annuity training requirements specific to Washington through training in other states but requires the other state trainings to include the best interest standards, rather than being substantially similar. The agency believes the best interest standards are paramount for consumer protections, instead of substantially similar trainings.</p>
<p>As it relates to the producer training requirements for producers who have already completed an annuity suitability training course prior to January 1, 2024, where such training did not include the new best interest standard, the model regulation provides that producers may complete either an additional one-hour (or credit) course or a new four-credit training course that includes the new best interest conduct training. As proposed here under WAC 284-17-265(2)(b), only the 1-hour (credit) option is available.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p> <p>The rule language has been revised to offer the option of producers taking the four-credit (or hour) course.</p> <p>Under WAC 284-17-265(2)(b), <i>“[i]f 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.”</i></p>

<p>We propose that the following language be added as a new subsection to make clear that producers need to comply with the insurer's standards for product training: <i>"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. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection."</i></p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p> <p>Under WAC 284-17-265(7) <i>"[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."</i></p> <p>Existing regulations outline that a producer may not rely on insurer-provided product-specific training standards and materials for compliance. The second part of this comment requests a change that will conflict with effective authorities in WAC 284-17-265(3)(d), which provides that <i>"[t]he 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."</i></p>
<p>We recommend revisions to (4)(b) and (6) in order to ensure that producers who have completed training requirements in another state that are substantially similar to those within this rule are deemed to have satisfied this rule's training requirements.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The final rule provides clear thresholds for compliance and satisfying the annuity suitability training requirements in WAC 284-17-265. The final rule language includes detailed provisions on meeting annuity training requirements specific to Washington through training in other states, but requires the other state trainings to include the best interest standards, rather than being substantially similar. The agency believes the best interest standards are paramount for consumer protections, instead of substantially similar trainings.</p>
<p>We propose that the following language be added as a new subsection to make clear that the satisfaction of training requirements of a course that are substantially similar to the provisions of</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The final rule provides clear thresholds for compliance and satisfying the annuity</p>

<p>this subsection satisfy the training requirements of this subsection: <i>“The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.”</i></p>	<p>suitability training requirements in WAC 284-17-265. The final rule language includes detailed provisions on meeting annuity training requirements specific to Washington through training in other states, but requires the other state trainings to include the best interest standards, rather than being substantially similar. The agency believes the best interest standards are paramount for consumer protections, instead of substantially similar trainings.</p>
<p>CR-102</p>	
<p>House Bill 1120 (Insurance Producers – Annuity Transactions – Best Interest Standard) passed earlier this year with an effective date of January 1, 2024, however the Producer Training section of the Suitability in Annuity Transactions Model Regulation was not adopted.</p> <p>We are looking for guidance as to whether the Producer Training section of the model regulation will be adopted at a later date, and, if so, what the particulars of that adoption may be (i.e., what training will be required, when existing and new producers must complete the required training, etc.).</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The rule references the updated producer training provisions in WAC 284-17-265.</p>
<p>We previously provided comments commending the OIC for proposing these regulations in order to complement and round out HB 1120 adopted earlier this year by the Washington Legislature in order to align with the NAIC Model Regulation on Suitability in Annuity Transactions.</p> <p>We wish to express our continuing gratitude to you and others at the OIC for moving forward with these regulations and in particular for incorporating the NAIC model disclosure notices into the proposed regulation. We believe these additional clarifications make the rules even more workable and effective to ensure Washington consumers benefit as fully as possible from the NAIC model regulations governing annuity sales in the State of Washington.</p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p>

<p>As we understand the producer training requirements for producers who have already completed an annuity suitability training course prior to January 1, 2024, where such training did not include the new best interest standard, the model regulation provides that producers may complete either an additional one-hour (or credit) course or a new four-credit training course that includes the new best interest conduct training.</p> <p>As proposed under WAC 284017-265(2)(b), only the 1-hour (credit) option is available. Even though producers in this position are more likely to opt for the shorter course, can we amend this section to allow for either the additional 1-credit training course or the new 4-credit best interest standard training course?</p>	<p>Thank you for your comment. The Commissioner considered this comment and made the following change to the rule language:</p> <p>The rule language has been revised to offer the option of producers taking the four-credit (or hour) course.</p> <p>Under WAC 284-17-265(2)(b), <i>“[i]f 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 <u>either</u> the four credit course in (a) of this section, <u>or</u> 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.”</i></p>
<p>We propose that the following language be added as a new subsection to make clear that the satisfaction of training requirements of a course that are substantially similar to the provisions of this subsection satisfy the training requirements of this subsection: <i>“The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.”</i></p>	<p>Thank you for your comment. The Commissioner considered this comment and made no changes to the rule.</p> <p>The final rule provides clear thresholds for compliance and satisfying the annuity suitability training requirements in WAC 284-17-265. The final rule language includes detailed provisions on meeting annuity training requirements specific to Washington through training in other states but requires the other state trainings to include the best interest standards, rather than being substantially similar. The agency believes the best interest standards are paramount for consumer protections, instead of substantially similar trainings.</p>

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

After the permanent rule is adopted and filed with the Office of the Code Reviser:

- Policy staff will distribute copies of the final rule and the CES to all interested parties through the State’s GovDelivery electronic mail system.
- The CR-103 documents and adopted rule will be posted on the OIC’s website.

Questions about the new regulations will be addressed by OIC staff as follows:

Type of Inquiry	Division
Consumer assistance	Consumer Protection
Rule content	Legal Affairs
Authority for rules	Policy
Enforcement of rule	Company Supervision
Market Compliance	Company Supervision

B. How the Agency intends to inform and educate affected persons about the rule.

The agency will answer inquiries, hold meetings, and provide assistance to all affected parties including but not limited to insurers, producers, consumers, and other regulators.

C. How the Agency intends to promote and assist voluntary compliance for this rule.

- Policy staff will distribute copies of the final rule and the CES to all interested parties through the State’s GovDelivery electronic mail system.
- The CR 103 documents and adopted rule will be posted on the OIC’s website.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

RCW 48.23.015 provides the Insurance Commissioner with the ability to investigate and enforce these regulations.

Approved providers offering the annuity suitability training with best interest standards must administer the courses, issue certifications of completion, report completed trainings to the Insurance Commissioner, and maintain records as required by WAC 284-17-270 through 284-17-312 (see WAC 284-17-265(3)(e)).

RCW 48.23.015(10) requires that “[i]nsurers, general agents, independent agencies, and producers must maintain or be able to make available to the

[c]ommissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for the insurance transaction for five years after the insurance transaction is completed by the insurer..." Additionally, each insurer must verify that their producers have completed the annuity suitability training with best interest standards, before allowing the producers to sell an annuity product for the insurer (WAC 284-17-265(5)).

The new legal framework also requires insurers to establish and maintain recommendation supervision systems that ensure the insurance needs and financial objectives of consumers, at the time of their transactions, are effectively addressed (see RCW 48.23.015(5)).

The above authorities, as well as enforcement by the Insurance Commissioner and updated framework provided by the NAIC, offer a robust regulatory system that will allow the agency to monitor whether the adopted regulations achieve their intended purpose. The Insurance Commissioner will monitor the frequency and impact of consumer complaints, investigations, and enforcement actions to evaluate whether the rules achieve their intended purpose. Decreases in the frequency or impacts of consumer complaints, investigations, or enforcement actions, as they pertain to annuity transactions with best interest standards, will show whether the rules achieve their intended purpose.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum	
To:	Mike Kreidler Insurance Commissioner
From:	Sr. Policy Analyst, Michael Walker Presiding Official, Hearing on Rule-making
Matter No. R 2023-05	
Topic of Rule-making: Best Interest Standard for Annuities	
<p>This memorandum summarizes the hearing on the above-named rule making, held on Tuesday, October 24, 2023, at 9:00 AM, virtually via Zoom meetings, over which I presided in your stead. There were 13 attendees registered and present at the public hearing, including agency personnel.</p>	
<p><u>The following agency personnel were present:</u></p> <ul style="list-style-type: none">Dan Connolly, Insurance Policy & Compliance Analyst (FPA 3)David Hippen, Actuary 3John Kelcher, Chief Market Analyst	
<p>In attendance and testifying:</p> <p>The Federation of Americans for Consumer Choice (FACC) and CEO Kim O'Brien</p>	
<p>Contents of the presentations made at hearing:</p> <p>FACC Comments - Indicated support for the proposed rule language and respect for OIC's rulemaking process. Summarized testimony – <i>"We really wanted to say a simple thank you to the OIC and for the opportunity to comment on the regulatory proposal. We previously provided comments to compliment the legislation being implemented, to help with alignment of authorities. Here, we wish to express our continuing gratitude to the OIC for moving forward and incorporating the disclosures from NAIC model regulation in the rule. We believe this will benefit consumers, regulators, and industry in implementing the model authority. This advances consumer protections and industry choice. We thank you for considering our comments and addressing these important matters."</i></p>	
<p>The hearing was adjourned.</p>	
<p><i>SIGNED this 24th day of October 2023</i></p>	

Michael S. Walker
Michael Walker, Presiding Official