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**Subject:** CR-101 Pre-proposal Statement of Inquiry: Best Interest Standard for Annuities:  
**Date:** Wednesday, August 2, 2023 7:32:08 AM  
**Attachments:** [Best Interest Training Updated Rule WAC 284-17-265 ACLI 111522 final.docx](#)  
[Best Interest Supervision Draft WAC 284-23-390 ACLI 111522 .docx](#)

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External Email

Dear Mr. Walker,

The ACLI has been pleased to work with the Office of Insurance Commissioner to enact HB 1120, which embodies the revised NAIC Model Regulation #275 and creates a best interest standard for annuity recommendations and sales in the state of Washington. We are gratified that the legislation was approved unanimously in both houses of the legislature and signed by Governor Inslee. Thirty-nine states have now approved these model rules, creating a true uniform national standard.

Therefore, we strongly support the OIC's proposed rulemaking, noticed in the above-mentioned CR-101, to fully align the regulations in the Insurance Code with HB 1120 and the NAIC model regulation. 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." During our joint work in 2022 to prepare a legislative proposal, we discussed a number of changes that would be needed to WAC provisions if the bill were to be enacted. We provided that attached annotated markup of several of these changes and commend these to you as you prepare your formal proposal. 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.

We look forward to reviewing and providing formal testimony in support of this proposed rule. Please let us know if you have any questions.

Sincerely,  
John

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## WAC 284-17-265

### Sales of annuities—~~Insurance p~~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 a producer and has successfully completed the annuity suitability training that meets the requirements of this section.

(2) ~~(a) A producer who engages in the sale of annuity products shall complete a one-time~~ (4) credit training course approved by the commissioner.

~~(b)~~ A producer who has completed an annuity training course approved by the commissioner prior to [insert effective date of amended regulation] shall, within six (6) months after [insert effective date of amended regulation], complete either:

~~(i)~~ A new four (4) credit training course approved by the commissioner after [insert effective date of amended regulation]; or

~~(ii)~~ An additional one-time one (1) credit training course approved by the commissioner and provided by the department of insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.

(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 standard 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 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 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](#).

(f) 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.

(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.

**Commented [DMM1]:** Defined term in legislation is "producer". Model deleted "insurance" because the updated requirements pertain to any "financial professional" or "producer" who seeks to be regulated by the updated requirements.

(b) A resident or nonresident producer completing the required training of this section in another state which has adopted the annuity suitability requirement shall be deemed as satisfying this state's requirement.

(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 from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

(6) ~~Insurance-p~~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.

## WAC 284-23-390

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

~~(1) For purposes of this section, "consumer profile information" means information that is effective to determine the suitability of a recommendation, including the following:~~

- ~~(a) Age;~~
  - ~~(b) Annual income;~~
  - ~~(c) Financial situation and needs, including:
    - ~~(i) the financial resources used for the funding of the annuity; and~~
    - ~~(ii) existing assets or financial products:
      - ~~(A) Including investment, annuity, and insurance holdings; and~~
      - ~~(iii) debts and other obligations.~~~~~~
  - ~~(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;~~
  - ~~(l) Tax status; and~~
  - ~~(m) insurance needs.~~
- ~~(12) In addition to the requirements in RCW [48.23.015](#)(4) an insurer must:~~

producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant producer training manuals;

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

material features of its annuity products to its producers;

(d) Establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure 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. 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) Establish and maintain procedures to detect recommendations that are not in compliance with [RCW 48.23.015 Sec. 3](#) subsections (a), (b), ~~(c) and (d)~~, ~~and (e)~~. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal

**Commented [DMM1]:** The term "producer", not "insurance producer" is defined, so this draft is edited accordingly.

**Commented [DMM2]:** The term "consumer profile information" must be in legislation rather than in regulation. ACLI deleted, here and inserted into legislation.

**Commented [DMM3]:** Citations updated to align with draft legislation.

monitoring. Nothing in this subsection ~~(8)~~(e) prevents an insurer from complying with this subsection (8)(e) by applying sampling procedures, or by confirming consumer profile information after issuance or delivery of the annuity;

(f) The insurer shall establish and maintain procedures to assess, prior to 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 procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(h) The insurer shall establish and maintain 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.

(3)(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.

(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.

(5) Neither an insurer nor 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 profile information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

**Commented [DMM4]:** Subsection "(8)" is not found in this regulation.

**Commented [DMM5]:** Subsection "(8)" is not found in this regulation