Certification Page
Regular and Emergency Rules
Revised June 2013

☐ Emergency Rules (*After completing all of Sections 1 and 2, proceed to Section 5 below*) ☑ Regular Rules

1. General Information

a. Agency/Board Name Department of Insurance		
b. Agency/Board Address 106 East 6th Avenue	c. City Cheyenne	d. Zip Code 82001
e. Name of Contact Person Heather Canarecci	f. Contact Telephone Number 307-777-6916	
g. Contact Email Address heather.canarecci1@wyo.gov	h. Adoption Date 1/23/2014	
i. Program		

2. Rule Type and Information: For each chapter listed, indicate if the rule is New, Amended, or Repealed.

If "New," provide the Enrolled Act numbers and years enacted: Rule 64, 2014

c. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed
(Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification)

Chapter Number:	Short Title:	New	Amended	Repealed
64	Suitability	☑	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
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d. ☑ The Statement of Reasons is attached to this certification.

e. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

3. State Government Notice of Intended Rulemaking	
a. Date on which the Notice of Intent containing all of the information required by W.S. 16-3-103(a) was filed with the **Secretary of State**:	May 29, 2013
b. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the **Legislative Service Office**:	May 29, 2013
c. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the **Attorney General**:	

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. ☑ Yes ☐ No ☐ N/A

b. A public hearing was held on the proposed rules. ☐ Yes ☐ No

If "Yes:"	Date:	Time:	City:	Location:
	Oct. 29, 2013	10:30 a.m.	Cheyenne	106 E. 6th Avenue Cheyenne, WY

5. Final Filing of Rules	
a. Date on which the Certification Page with original signatures and final rules were sent to the **Attorney General's Office for the Governor's signature**:	January 23, 2014
b. Date on which final rules were sent to the **Legislative Service Office**:	January 24, 2014
c. Date on which a PDF of the final rules was electronically sent to the **Secretary of State**:	January 24, 2014

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual *(Blue ink as per Rules on Rules, Section 7)*	Tom C Hirsig
Printed Name of Signatory	Tom C. Hirsig
Signatory Title	Commissioner
Date of Signature	January 23, 2014

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

Attorney General: 1. Statement of Reasons; 2. Original Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; and 5. Memo to Governor documenting emergency (for emergency rules only).

LSO: 1. Statement of Reasons; 2. Copy of Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; 5. Electronic copy of rules: clean and strike/underscore; and 6. Memo to Governor documenting emergency (for emergency rules only).

SOS: 1. PDF of clean copy of rules; and 2. Hard copy of Certification Page as delivered by the AG.

DEPARTMENT OF INSURANCE

STATE OF WYOMING

IN THE MATTER OF THE PROPOSED,	)	Docket No. 13-08
REGULATION – CHAPTER 64 OF THE	)	
WYOMING DEPARTMENT OF INSURANCE	)	
RULES AND REGULATIONS – SUITABILITY	)	

STATEMENT OF PRINCIPAL REASONS FOR:

CREATION OF CHAPTER 64 OF WYOMING INSURANCE DEPARTMENT REGULATION GOVERNING SUITABILITY IN ANNUITY TRANSACTIONS

Specifically, this regulation is necessary because, annuity purchases can have a significant impact on consumers, and may create a financial burden for many years if an inappropriate product is recommended and purchased. These types of financial products are increasing in complexity and are often accompanied by significant fees if the policy is surrendered before a stated period of time, typically eight or more years. This chapter is created to assist consumers with annuity purchase decisions through full disclosure of the financial impact and an evaluation of the suitability of this type of investment. Product suitability is seen as a needed protection for Wyoming consumers, especially for a vulnerable and increasing population of senior citizens. The Department has experienced a growing number of requests for assistance following investment into products where the consumer did not fully understand. The standards proposed will bring Wyoming in line with the majority of state regulators requiring uniform disclosure for financial information on purchases that may have long lasting impacts on a consumer's financial plan.

DEPARTMENT OF INSURANCE

STATE OF WYOMING

IN THE MATTER OF THE CREATION OF	**)**	
REGULATION 64 OF THE RULES AND	**)**	**Docket 13-08**
REGULATIONS OF THE WYOMING	**)**	
INSURANCE DEPARTMENT	**)**	

<u>SUMMARY OF COMMENTS TO</u>

Creation of Chapter 64 of the Wyoming Insurance Department Regulations

Regulation Governing Suitability in Annuity Transactions

The Wyoming Department of Insurance received sixteen comments from the following companies and individuals: Symetra, American Council of Life Insurers, Nationwide Life Insurance Company, Thrivent Financial for Lutherans, Christopher Taggart, Consumer Credit Industry Association, Paul Mogen, Steve Hampton, Insured Retirement Institute, Northwestern Mutual (two locations), Primerica, State Farm, MetLife, Transamerica Companies and Allstate Financial.

In summary of the comments, the above-listed companies support the adoption of the NAIC Suitability Model Rule in Annuity Transactions; however, they do not want the regulation expanded to include life insurance. The companies and individuals stated that life insurance is not an investment product and should not be subject to investment product standards. Multiple comments also stated that other model NAIC regulations address the same issues and that adding life insurance to the regulation would create redundancies. Several comments mentioned that variable life insurance is subject to FINRA suitability standards. The cost and expense of the adoption of the rules was also commented on. They believe that the additional expense would be passed on to policyholders. The commenters are not aware of any abuse in life insurance products that would be remediated by expanding the suitability rules into life insurance products.

The companies and individuals that have sent in public comments would like to see the proposed Chapter 64 revised to make it consistent with the NAIC model regulation and to remove the references to life insurance in the regulation.

American Council of Life Insurers and State Farm requested a Public Hearing on the proposed regulation.

The Department held a public hearing on October 29, 2013, and the comments that were made were accepted and used to finalize the final rules.

CHAPTER 64
REGULATION GOVERNING SUITABILITY
IN ANNUITY TRANSACTIONS

Section 1. **Authority**

These rules and regulations governing the suitability in annuity transactions in the State of Wyoming supplement the provisions of W.S. 26-3-116(b)(ii), W.S. 26-9-231, W.S. 26-13-102, W.S. 26-13-103, W.S. 26-13-104, W.S. 26-13-105, W.S. 26-13-106, W.S. 26-13-107, W.S. 26-13-110, W.S. 26-13-116, W.S. 26-15-107, W.S. 26-15-109, and W.S. 26-15-110. They are promulgated by authority of and pursuant to the Wyoming Administrative Procedure Act (W.S. 16-3-101 through W.S. 16-3-115) and the Wyoming Insurance Code (W.S. 26-2-110 and W.S. 26-2-125).

Section 2. **Purpose**

The purpose of this Regulation is:

(a) To require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(b) To declare that failure to comply with the provisions of this Regulation will be deemed an unfair method of competition and an unfair trade practice.

Section 3. **Scope**

This regulation shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

Section 4. **Definitions**

(a) "Annuity" as set forth in W.S. 26-1-102(iv) means an annuity that is an insurance product that is individually solicited, whether the product is classified as an individual or group annuity.

(b) “Continuing education credit” or “CE credit” means one continuing education credit as defined in W.S. 26-9-231 et seq.

(c) “Continuing education provider” or “CE Provider” means an individual or entity that is approved to offer continuing education courses pursuant to Wyoming Department of Insurance Rules and Regulations, Chapter 20, Section 11.

(d) “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.

(e) “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

(f) “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

“

(g) “Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or placement of an annuity policy in accordance with that advice.

(h) “Replacement” means any transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or the proposing insurer if there is no producer, that by reason of such transaction, an existing annuity has been or is to be:

(i) Lapsed, forfeited, surrendered, or otherwise terminated;

(ii) 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;

(iii) 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;

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

(v) 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 (25%) of the loan value set forth in the policy.

(i) “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(i) Age;

(ii) Annual Income;

(iii) Financial situation and needs, including the financial resources used for the funding of the annuity;

(iv) Financial experience;

(v) Financial objectives;

(vi) Intended use of the annuity to be purchased;

(vii) Financial time horizon;

(viii) Existing assets, including investment and life insurance holdings;

(ix) Liquidity needs;

(x) Liquid net worth;

(xi) Risk tolerance; and

(xii) Tax status.

Section 5. **Exemptions**

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

(a) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

(b) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Formal prepaid funeral contracts.

Section 6. **Duties of Insurers and of Insurance Producers**

(a) In recommending to a consumer the purchase of an annuity, or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(i) 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, any mortality and expense fees, market value adjustments, investment advisory fees, potential charges for and features of riders, limitations on interest returns, equity indexed features, insurance and investment components and market risk;

(ii) The consumer would benefit from certain features of the annuity, such as but not limited to death or living benefits, tax-deferred growth or annuitization;

(iii) The particular annuity as a whole, the underlying subaccounts or equity index features 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

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

(A) 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), lose cash value, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

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

(C) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six (36) months.

(b) 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.

(c) Except as permitted under subsection (d), 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.

(d) Except as provided under paragraph (e) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection (a) or (c) related to any annuity transaction if:

(i) No recommendation is made;

(ii) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(iv) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(e) An insurer's issuance of an annuity subject to paragraph (d) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

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

(i) Make a record of any recommendation subject to section 6 (a) of this regulation;

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

(iii) 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.

(g) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

(i) The insurer shall 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;

(ii) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;

(iii) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(iv) The insurer shall 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;

(v) The insurer shall 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 subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(vi) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a 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.

(h) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (g). An Insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (i) of this paragraph.

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

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

(B) 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.

(i) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

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

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

(ii) Filing a complaint; or

(iii) Cooperating with the investigation of a complaint.

(k) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of variable products if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.

(i) For paragraph (k) to apply, an insurer shall:

(A) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(B) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Section 7. **Insurance Producer Training**

(a) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(b) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by a department of insurance approved education provider.

(i) Insurance producers who hold a life insurance license on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance license on or after the effective date of this regulation may not engage in the sale of annuities until the training course required under this subsection has been completed.

(c) The minimum length of training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(d) The training required under this subsection shall include information on the following topics:

(i) The types of annuities and various classifications ofannuities;

(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 non-qualified annuities;

(v) The primary uses of annuities; and

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

(e) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(f) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in Wyoming Department of Insurance Regulations Chapter 20.

(g) Annuity training courses may be conducted and completed by classroom or home-study methods in accordance with Wyoming Department of Insurance Regulations Chapter 20.

(h) Providers of annuity training shall comply with the reporting requirement and shall issue certificates of completion in accordance with Wyoming Department of Insurance Regulations Chapter 20.

(i) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

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

Section 8. **Compliance Mitigation; Penalties**

(a) An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commission may order:

(i) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation.

(ii) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and

(iii) Appropriate penalties and sanctions pursuant to Wyo. Stat 26-1-107 et. al.

(b) Any applicable penalty under Wyo. Stat 26-1-107 et. al. for a violation of this regulation may be reduced or eliminated, as determined by the Insurance Commissioner, if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Section 9. **Recordkeeping**

(a) Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for three (3) years after the insurance transaction is completed by the insurer. An insurer is perm itted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Section 10. **Effective Date**

This regulation shall take effect six months after filing with the Secretary of State.

CHAPTER 64
REGULATION GOVERNING SUITABILITY
IN ~~LIFE INSURANCE AND~~ ANNUITY TRANSACTIONS

Section 1. **Authority**

These rules and regulations governing the suitability in ~~life insurance policies and~~ annuity transactions in the State of Wyoming supplement the provisions of W.S. 26-3-116(b)(ii), W.S. 26-9-231, W.S. 26-13-102, W.S. 26-13-103, W.S. 26-13-104, W.S. 26-13-105, W.S. 26-13-106, W.S. 26-13-107, W.S. 26-13-110, W.S. 26-13-116, W.S. 26-15-107, W.S. 26-15-109, and W.S. 26-15-110. They are promulgated by authority of and pursuant to the Wyoming Administrative Procedure Act (W.S. 16-3-101 through W.S. 16-3-115) and the Wyoming Insurance Code (W.S. 26-2-110 and W.S. 26-2-125).

Section 2. **Purpose**

The purpose of this Regulation is:

(a) To require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving ~~life insurance and~~ annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(b) To declare that failure to comply with the provisions of this Regulation will be deemed an unfair method of competition and an unfair trade practice.

Section 3. **Scope**

This regulation shall apply to any recommendation to purchase, exchange or replace an ~~life insurance policy or~~ annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

Section 4. **Definitions**

(a) "Annuity"~~,~~ as set forth in W.S. 26-1-102(iv) means an annuity that is an insurance product that is individually solicited, whether the product is classified as an individual or group annuity.

(b) “Continuing education credit” or “CE credit” means one continuing education credit as defined in W.S. 26-9-231 et seq.

(c) "Continuing education provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to Wyoming Department of Insurance Rules and Regulations, Chapter 20, Section 11.

(d) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(e) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

(f) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

~~(g)~~ "~~Life insurance" means insurance on human live and the transaction of life insurance set forth in W.S. 26-5-102 et seq.~~

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~~(h)~~ (g) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or placement of an ~~life insurance or~~ annuity policy in accordance with that advice.

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

(i) Lapsed, forfeited, surrendered, or otherwise terminated;

(ii) 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;

(iii) 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;

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

(v) 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 (25%) of the loan value set forth in the policy.

~~(j)~~ (i) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(i) Age;

(ii) Annual Income;

(iii) Financial situation and needs, including the financial resources used for the funding of the ~~life insurance policy or~~ annuity;

(iv) Financial experience;

(v) Financial objectives;

(vi) Intended use of the ~~life insurance or~~ annuity to be purchased;

(vii) Financial time horizon;

(viii) Existing assets, including investment and life insurance holdings;

(ix) Liquidity needs;

(x) Liquid net worth;

(xi) Risk tolerance; and

(xii) Tax status.

Section 5. **Exemptions**

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

(a) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

(b) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Formal prepaid funeral contracts.

Section 6. **Duties of Insurers and of Insurance Producers**

(a) In recommending to a consumer the purchase of ~~a life insurance policy or of~~ an annuity, or the exchange of ~~a life insurance policy or of~~ an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

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

(ii) The consumer would benefit from certain features of the ~~life insurance policy or~~ annuity, such as but not limited to death or living benefits, tax-deferred growth or annuitization;

(iii) The particular ~~life insurance policy or~~ annuity as a whole, the underlying subaccounts or equity index features to which funds are allocated at the time of purchase or exchange of the ~~life insurance policy or~~ 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

(iv) In the case of an exchange or replacement of ~~a life insurance policy or of~~ an annuity, the exchange or replacement is suitable including taking into consideration whether:

(A) 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), lose cash value, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

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

(C) The consumer has had another ~~life insurance policy or~~ annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six (36) months.

(b) Prior to the execution of a purchase, exchange or replacement of ~~a life insurance policy or 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.

(c) Except as permitted under subsection (d), an insurer shall not issue ~~a life insurance policy or~~ an annuity recommended to a consumer unless there is a reasonable basis to believe the ~~life insurance policy or~~ annuity is suitable based on the consumer's suitability information.

(d) Except as provided under paragraph (e) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection (a) or (c) related to any ~~life insurance or~~ annuity transaction if:

(i) No recommendation is made;

(ii) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) A consumer refuses to provide relevant suitability information and the ~~life insurance or~~ annuity transaction is not recommended; or

(iv) A consumer decides to enter into an ~~life insurance or~~ annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(e) An insurer's issuance of an ~~life insurance policy or~~ annuity subject to paragraph (d) shall be reasonable under all the circumstances actually known to the insurer at the time the ~~life insurance policy or~~ annuity is issued.

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

(i) Make a record of any recommendation subject to section 6 (a) of this regulation;

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

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

(g) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

(i) The insurer shall 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;

(ii) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;

(iii) The insurer shall provide product-specific training and training materials which explain all material features of its ~~life insurance and~~ annuity products to its insurance producers;

(iv) The insurer shall maintain procedures for review of each recommendation prior to issuance of an ~~life insurance policy or~~ 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;

(v) The insurer shall 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 subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the ~~life insurance or~~ annuity; and

(vi) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a 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.

(h) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (g). An Insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (i) of this paragraph.

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

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

(B) 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.

(i) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the ~~life insurance and~~ annuities offered by the insurer.

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

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

(ii) Filing a complaint; or

(iii) Cooperating with the investigation of a complaint.

(k) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of variable products if the suitability and supervision is similar to those applied to ~~variable life and~~ variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.

(i) For paragraph (k) to apply, an insurer shall:

(A) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(B) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Section 7. **Insurance Producer Training**

(a) An insurance producer shall not solicit the sale of ~~life insurance or~~ an annuity product unless the insurance producer has adequate knowledge of the product to recommend the ~~life insurance or~~ annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(b) An insurance producer who engages in the sale of ~~life insurance or~~ annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by a department of insurance approved education provider.

(i) Insurance producers who hold a life insurance license on the effective date of this regulation and who desire to sell ~~life insurance or~~ annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance license on or after the effective date of this regulation may not engage in the sale of ~~life insurance or~~ annuities until the training course required under this subsection has been completed.

(c) The minimum length of training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(d) The training required under this subsection shall include information on the following topics:

(i) The types of ~~life insurance and~~ annuities and various classifications of ~~such products~~annuities;

(ii) Identification of the parties to an ~~life insurance policy or~~ annuity;

(iii) How fixed, variable, and indexed annuity contract provisions affect consumers;

~~(iv) How whole, universal, variable, indexed, and term life insurance contract provisions affect consumers;~~

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~~(v)~~ (iv) The application of income taxation ~~of transactions within a life insurance policy and of income taxation~~ of qualified and non-qualified annuities;

~~(vi)~~ (v) The primary uses of ~~life insurance and~~ annuities; and

~~(vii)~~ (vi) Appropriate sales practices, replacement and disclosure requirements.

(e) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(f) A provider of an ~~life insurance and~~ annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in Wyoming Department of Insurance Regulations Chapter 20.

(g) ~~Life insurance and a~~Annuity training courses may be conducted and completed by classroom or home-study methods in accordance with Wyoming Department of Insurance Regulations Chapter 20.

(h) Providers of ~~life insurance and~~ annuity training shall comply with the reporting requirement and shall issue certificates of completion in accordance with Wyoming Department of Insurance Regulations Chapter 20.

(i) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

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

Section 8. **Compliance Mitigation; Penalties**

(a) An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commission may order:

(i) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation.

(ii) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and

(iii) Appropriate penalties and sanctions pursuant to Wyo. Stat 26-1-107 et. al.

(b) Any applicable penalty under Wyo. Stat 26-1-107 et. al. for a violation of this regulation may be reduced or eliminated, as determined by the Insurance Commissioner, if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Section 9. **Recordkeeping**

(a) Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for three (3) years after the insurance transaction is completed by the insurer. An insurer is perm itted, but shall not be required, to maintain documentation on behalf of an insurance producer.

~~Section 9.~~Section 10. **Effective Date**

This regulation shall take effect six months after filing with the Secretary of State.

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