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R590. Insurance, Administration.

R590-229. Annuity Disclosure. (Effective 10-7-04)

R590-229-1. Authority.

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for buyer's guides and disclosures and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-229-2. Purpose.

The purpose of this rule is to:

(1) provide standards for the disclosure of minimum information about annuity contracts to protect consumers by specifying:

(a) the minimum information that must be disclosed; and  
(b) the method for disclosing it in connection with the sale of annuity contracts; and

(2) foster consumer education by ensuring that purchasers of annuity contracts understand certain basic features of annuity contracts.

R590-229-3. Scope.

(1) This rule applies to individual and group annuity contracts and certificates except:

(a) registered or non-registered variable annuities or other registered products;

(b)(i) annuities used to fund:

(A) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);

(B) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), or 403(b) where the plan is established or maintained by an employer;

(C) a government or church plan defined in IRC Section 414 or a deferred compensation plan or a state or local government or a tax exempt organization under IRC Section 457; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (1)(b)(i) of this section, this rule shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and

(c) structured settlement annuities; and

(d) funding agreements.

(2) The disclosure document requirements of this rule do not apply to immediate and deferred annuities that contain no nonguaranteed elements.

R590-229-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) **Buyer's Guide** means a document which contains, and is limited to, the language contained in the Buyer's Guide to

Fixed Deferred Annuities and its Appendix I Equity-Indexed Annuities, dated 1998, as adopted by, and available from the National Association of Insurance Commissioners, which are incorporated in this rule by reference or go to the department's website.

(2) **Contract owner** means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(3) **Determinable elements** means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if all of the underlying elements that go into its calculation are either guaranteed or determinable.

(4) "Disclosure document" means the document described in Subsection 6(2) of this rule.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) **Generic name** means a short title descriptive of the annuity contract being applied for such as **single premium deferred annuity**.

(7) **Guaranteed elements** means premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) **Non-guaranteed elements** means the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying elements that go into its calculation are non-guaranteed.

(9) **Structured settlement annuity** means a **qualified funding asset** as defined in IRC Section 130(d) or an annuity that would be a qualified funding asset under IRC Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

#### R590-229-5. Appropriate Buyer's Guide.

(1) Where an application for an equity-indexed annuity is taken, the "Buyer's Guide to Fixed Deferred Annuities" with "Appendix I for Equity-Indexed Annuities" shall be the Buyer's Guide given to the applicant and will be considered the appropriate Buyer's Guide for the product.

(2) For all other annuity products, the Buyer's Guide to Fixed Deferred Annuities with or without Appendix I Equity-Indexed Annuities will be considered the appropriate Buyer's Guide.

R590-229-6. Standards for the Disclosure Document and Buyer's Guide.

(1)(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall, at or before the time of application, be given both the disclosure document described in Subsection 6(2) of this section and the appropriate Buyer's Guide, as described in Section 5.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the appropriate Buyer's Guide no later than five business days after the completed application is received by the insurer.

(i) With respect to an application received as a result of a direct solicitation through the mail:

(A) providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days after receipt of the application; and

(B) providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(ii) With respect to an application received via the Internet:

(A) taking reasonable steps to make the appropriate Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days of receipt of the application; and

(B) taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the prospective applicant can obtain from the insurer a free annuity Buyer's Guide upon request.

(2) At a minimum, the following information shall be included in the disclosure document required to be provided under this rule:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate of:

(i) the guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options, both on a guaranteed and

non-guaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract;

(v) how values in the contract can be accessed;

(vi) the death benefit, if available, and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) information about the current guaranteed rate for a new contract that contains a clear notice that the rate is subject to change.

(3) An insurer shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

#### R590-229-7. Report to Contract Owners.

For an annuity in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide the contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) the beginning and end date of the current report period;

(2) the accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) the total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and

(4) the amount of outstanding loans, if any, as of the end of the current report period.

#### R590-229-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule on the date this rule goes into effect.

#### R590-229-9. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, annuity disclosure

2004

31A-2-201

31A-22-425

[\[Back to Top\]](#)