

State of Utah
Administrative Rule Analysis
Revised June 2022

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-229

Filing ID: Office Use Only

Agency Information

1. Department:	Insurance
Agency:	Administration
Room number:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S. 2700 W.
City, state and zip:	Taylorville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901

Contact persons:

Name:	Phone:	Email:
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R590-229. Annuity Disclosure

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove the Enforcement Date section, and update the Severability section to use the department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-22-425	

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	

Issue Date	
Issue or Version	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:	03/31/2023	
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

9. This rule change MAY become effective on:	04/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	02/08/2023

R590. Insurance, Administration.

R590-229. Annuity Disclosure.

R590-229-1. Authority.

This rule is promulgated ~~[pursuant to Section 31A-2-425 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]~~ by the commissioner pursuant to Sections 31A-2-201 and 31A-22-425.

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. Purpose and Scope.

~~(1) The purpose of this rule is to provide a standard for the disclosure of information in connection with the sale of an annuity contract to protect a consumer and foster consumer education.~~
~~(2) This rule applies to an insurer when offering an individual [and] or group annuity [contracts and certificates] contract or certificate except:~~
~~(a) a registered or non-registered variable [annuities] annuity or other registered product[s];~~
~~[(b)(i) annuities used to fund;](b) a structured settlement annuity;~~
~~(c) a funding agreement; or~~
~~(d) an annuity used to fund:~~
~~[(A)](i) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);~~
~~[(B)](ii) a plan described by [Internal Revenue Code (IRC) Sections] Section 401(a), 401(k), or 403(b) of the Internal Revenue Code where the plan is established or maintained by an employer;~~
~~[(C)](iii) a government or church plan defined in [IRC Section 414 or] Section 414, Internal Revenue Code;~~
~~(iv) a deferred compensation plan [or] of a state [or], a local government, or a tax[-]exempt organization under [IRC] Section 457, Internal Revenue Code; or~~
~~[(D)](v) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.~~
~~[(ii)](3) Notwithstanding Subsection [(1)(b)(i) of this section](2)(d), this rule [shall apply to annuities] applies to an annuity used to fund a plan or arrangement that;~~

- ~~_____ (a) is funded [solely]only by contributions an employee elects to make [whether]on a pre-tax or after-tax basis; and~~
~~_____ (b) where 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](4) An immediate or deferred annuity that does not contain a nonguaranteed element is exempt from the disclosure document requirement[s] of this rule[do not apply to immediate and deferred annuities that contain no nonguaranteed elements].~~

[
R590-229-4. Incorporation by Reference.

~~_____ The following Buyer's Guides are hereby incorporated by reference within this rule:~~

- ~~_____ (1) "Buyer's Guide for Deferred Annuities" dated 2013, as adopted by and available from the National Association of Insurance Commissioners;~~
~~_____ (2) "Buyer's Guide for Deferred Annuities - Fixed" dated 2013, as adopted by and available from the National Association of Insurance Commissioners; and~~
~~_____ (3) "Buyer's Guide for Deferred Annuities - Variable" dated 2013 as adopted by and available from the National Association of Insurance Commissioners.]~~

R590-229-[5]3. Definitions.

~~[In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule]Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

~~(1) "Buyer's [Guide]guide" means a document [which]that contains, and is limited to, the language contained in the "Buyer's Guide for Deferred Annuities," [dated 2013, the] "Buyer's Guide for Deferred Annuities - Fixed," [dated 2013, and the]and "Buyer's Guide for Deferred Annuities - Variable" [dated 2013]as adopted and periodically amended by the NAIC.~~

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

~~(3)(a) "Determinable element[s]" means [elements that are]an element derived from a process[es] or method[s] that [are]is guaranteed at issue and not subject to company discretion, but where the value[s] or amount[s] 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.~~

~~(b) 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.]~~

~~_____ (4)(a) "Direct solicitation" means a personalized solicitation to a specific individual through an insurer or producer that is not a direct-response solicitation.~~

~~_____ (b) "Direct solicitation" does not include a group meeting held by a producer solely for educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual.~~

~~_____ (5) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mail, telephone, the internet, or other mass communication media.~~

~~_____ (6) "Disclosure document" means a document that describes, outlines, and specifies the required information to be provided to a prospective applicant.~~

~~_____ [(5)](7) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at a future date[s] in amounts that are not based on a mortality or morbidity [contingencies]contingency.~~

~~_____ [(6)](8) "Generic name" means a short title [descriptive of the]that describes the premium and benefit patterns of an 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.]~~

~~_____ (9)(a) "Guaranteed element" means any of the following elements that are guaranteed and determined at issue:~~

~~_____ (i) a premium;~~

~~_____ (ii) a credited interest rate with applicable bonus;~~

~~_____ (iii) a benefit;~~

~~_____ (iv) a value;~~

~~_____ (v) a non-interest-based credit;~~

~~_____ (vi) a charge; or~~

~~_____ (vii) an element of a formula used to determine an element in Subsections (9)(a)(i) through (9)(a)(vi).~~

~~_____ (b) An element is considered guaranteed if all 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.]

(10)(a) "Nonguaranteed element" means any of the following elements that are subject to company discretion and are not guaranteed or not determined at issue:

- (i) a premium;
- (ii) a credited interest rate with applicable bonus;
- (iii) a benefit;
- (iv) a value;
- (v) a non-interest-based credit;
- (iv) a charge; or
- (vii) an element of a formula used to determine an element in Subsections (10)(a)(i) through (10)(a)(vi).

(b) An element is considered nonguaranteed if any underlying element that goes into its calculation is nonguaranteed.

[(9)](11) "Structured settlement annuity" means an annuity that is or would be 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), Internal Revenue Code, but for the fact that it is not owned by an assignee under a qualified assignment.

R590-229-[6]4. Appropriate Buyer's Guide.

(1) The "Buyer's Guide for Deferred Annuities" ~~shall be considered~~ is the appropriate ~~Buyer's Guide~~ buyer's guide for an annuity product.

(2) Notwithstanding Subsection (1) ~~for a non-variable annuity product,~~:

(a) the "Buyer's Guide [to]for Deferred Annuities - Fixed" may be used as the appropriate [Buyer's Guide]buyer's guide for a non-variable annuity product; and

[(3) If an insurer elects to provide a Buyer's Guide for a variable annuity product, the insurer may use either the "Buyer's Guide for Deferred Annuities" or](b) the "Buyer's Guide for Deferred Annuities - Variable[-]" may be used as the appropriate buyer's guide for a variable annuity product.

R590-229-[7]5. Standards for the Disclosure Document and Buyer's Guide.

(1)(a) ~~Where the~~When an 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 ~~[7(2) of this section]~~(2) and the appropriate ~~Buyer's Guide, as described in Section 6]~~buyer's guide described in Section R590-229-4.

(b) ~~Where the~~When an application for an annuity contract is not taken ~~by means other than~~in a face-to-face meeting, the applicant shall be sent both the disclosure document described in Subsection (2) and the appropriate ~~Buyer's Guide~~buyer's guide described in Section R590-229-4 no later than five business days after the completed application is received by the insurer.

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

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

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

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

(A) ~~taking reasonable steps to make~~making the appropriate ~~Buyer's Guide~~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~~buyer's guide is provided no later than five business days ~~of~~after receipt of the application; and

(B) ~~taking reasonable steps to make~~making 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~~is 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~~buyer's guide upon request.

(2) ~~At a minimum, the~~Disclosure document. 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, and examples, as appropriate, 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 the rate[s] may change from time to time and ~~are~~is not guaranteed;

(iii) periodic income options, both on a guaranteed and non-guaranteed basis;

(iv) any value reduction[s] caused by a withdrawal[s] from or surrender of the contract;

- (v) how ~~[values in]~~the value of the contract can be accessed;
 - (vi) the death benefit, if available, and how it ~~[will be]~~is calculated;
 - (vii) a summary of the federal tax status of the contract and any ~~[penalties]~~penalty applicable on a withdrawal of a value[s] from the contract; and
 - (viii) the impact of any rider, such as a long-term care rider;
 - (d) the specific dollar amount or percentage ~~[charges and fees]~~of any charge or fee shall be listed with an explanation of how ~~[they apply]~~it applies; 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]~~document in language that ~~[facilitates the understanding]~~is understandable by a typical person within the segment of the public to which the disclosure ~~[statement]~~document is directed.

R590-229-[8]6. Report to Contract Owners.

- (1) The insurer shall provide to a contract owner, at least annually, a report on the status of an annuity contract for:~~[For]~~
- ~~(a) an annuity in the payout period with changes in non[-]guaranteed elements[- and for]; or~~
 - ~~(b) a deferred annuity in 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].~~
- (2) The report shall contain at least the following information:
- ~~[(1)](a)~~ the beginning and end date of the current report period;
 - ~~[(2) the]~~(b) any accumulation [and] or 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]~~(c) any amount that has been credited, charged to the contract value, or paid during the current report period; and
 - ~~[(4)](d)~~ the amount of any outstanding loan[s, if any,] as of the end of the current report period.

~~**R590-229-9. Enforcement Date.**~~

~~The commissioner will begin enforcing the provisions of this rule 65 days after the effective date.]~~

R590-229-[10]7. 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.]~~If any provision of this rule, Rule R590-229, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance, annuity disclosure

Date of Enactment or Last Substantive Amendment: May 27, 2014

Notice of Continuation: August 20, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-425