

State of Utah
Administrative Rule Analysis
Revised May 2024

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number:

R590-229

Filing ID: Office Use Only

Date of Previous Publication (Only for CPRs):

Click or tap to enter a date.

Agency Information

1. Title catchline:	Insurance, Administration	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R590-229. Annuity Disclosure
3. Purpose of the new rule or reason for the change:
During a five-year review of this rule, the Department discovered a definition that is now defined in statute, and a hyphenation error.
4. Summary of the new rule or change:
This filing removes the definition of "direct response solicitation," which is defined in 31A-1-301, and removes the hyphen in "non-guaranteed" in R590-229-5(2)(c)(iii) to be consistent with the rest of the rule.

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 amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.
B) Local governments:
There is no anticipated cost or savings to local governments. The amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.
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 amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.
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 amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.

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 amendment merely removes a definition and fixes a spelling error. These changes do not require compliance, and there are no costs associated with the changes.

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	FY2025	FY2026	FY2027
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	FY2025	FY2026	FY2027
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 the Insurance Department, 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 or updates 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 or updates 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	
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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:		10/31/2024
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):
To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	11/07/2024
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, 63G-3-302, 63G-3-303, and 63G-3-402. 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:	09/10/2024

R590. Insurance, Administration.

R590-229. Annuity Disclosure.

R590-229-1. Authority.

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

R590-229-2. 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 or group annuity contract or certificate except:

- (a) a registered or non-registered variable annuity or other registered product;
- (b) a structured settlement annuity;
- (c) a funding agreement; or
- (d) an annuity used to fund:

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

(ii) a plan described by Section 401(a), 401(k), or 403(b) of the Internal Revenue Code where the plan is established or maintained by an employer;

(iii) a government or church plan defined in Section 414, Internal Revenue Code;

(iv) a deferred compensation plan of a state, a local government, or a tax-exempt organization under Section 457, Internal Revenue Code;

or

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

(3) Notwithstanding Subsection (2)(d), this rule applies to an annuity used to fund a plan or arrangement that:

- (a) is funded only by contributions an employee elects to make on a pre-tax or after-tax basis; and
- (b) where there is direct solicitation of an individual employee by a producer for the purchase of an annuity contract.

(4) An immediate or deferred annuity that does not contain a nonguaranteed element is exempt from the disclosure document requirement of this rule.

R590-229-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Buyer's guide" means a document that contains, and is limited to, the language contained in the "Buyer's Guide for Deferred Annuities," "Buyer's Guide for Deferred Annuities - Fixed," and "Buyer's Guide for Deferred Annuities - Variable" 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" means an element derived from a process or method that is guaranteed at issue and not subject to company discretion, but where the value or amount cannot be determined until some point after issue.

(b) An element is considered determinable if all the underlying elements that go into its calculation are either guaranteed or determinable.

(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 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)]~~ (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)]~~(5) "Disclosure document" means a document that describes, outlines, and specifies the required information to be provided to a prospective applicant.

~~[(7)]~~(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at a future date in amounts that are not based on a mortality or morbidity contingency.

~~[(8)]~~(7) "Generic name" means a short title that describes the premium and benefit patterns of an annuity contract, such as "single premium deferred annuity."

~~[(9)(a)]~~(8)(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.

~~[(10)(a)]~~(9)(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;
- (vi) 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.

~~[(11)]~~(10) "Structured settlement annuity" means an annuity that is or would be a "qualified funding asset" as defined in Section 130(d), Internal Revenue Code, but for the fact that it is not owned by an assignee under a qualified assignment.

R590-229-4. Appropriate Buyer's Guide.

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

(2) Notwithstanding Subsection (1):

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

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

(1)(a) 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 (2) and the appropriate buyer's guide described in Section R590-229-4.

(b) When an application for an annuity contract is not taken 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 described in Section R590-229-4 no later than five business days after the completed application is received by the insurer.

(i) For an application received as a result of a solicitation through the mail:

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

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

(ii) For an application received via the internet:

(A) making the appropriate buyer's guide available for viewing and printing on the insurer's website shall satisfy the requirement that the appropriate buyer's guide is provided no later than five business days after receipt of the application; and

(B) making the disclosure document available for viewing and printing on the insurer's website shall satisfy the requirement that the disclosure document 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 upon request.

(2) Disclosure document. The following information shall be included in the disclosure document:

- (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:
 - (i) the guaranteed, nonguaranteed and determinable elements of the contract, their limitations, 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 may change from time to time and is not guaranteed;
- (iii) periodic income options, both on a guaranteed and ~~[non-guaranteed]~~ nonguaranteed basis;
- (iv) any value reduction caused by a withdrawal from or surrender of the contract;
- (v) how the value of the contract can be accessed;
- (vi) the death benefit, if available, and how it is calculated;
- (vii) a summary of the federal tax status of the contract and any penalty applicable on a withdrawal of a value from the contract; and
- (viii) the impact of any rider, such as a long-term care rider;
- (d) the specific dollar amount or percentage of any charge or fee shall be listed with an explanation of how 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 document in language that is understandable by a typical person within the segment of the public to which the disclosure document is directed.

R590-229-6. 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:

- (a) an annuity in the payout period with changes in nonguaranteed elements; or
- (b) a deferred annuity in the accumulation period.

(2) The report shall contain at least the following information:

- (a) the beginning and end date of the current report period;
- (b) any accumulation or cash surrender value at the end of the previous report period and at the end of the current report period;
- (c) any amount that has been credited, charged to the contract value, or paid during the current report period; and
- (d) the amount of any outstanding loan as of the end of the current report period.

R590-229-7. Severability.

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 Last Change: April 7, 2023

Notice of Continuation: August 20, 2019

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