

State of Utah
Administrative Rule Analysis
 Revised November 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment ___; Repeal ___; Repeal and Reenact _x_		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R590-93	Filing ID (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-93. Replacement of Life Insurance and Annuities
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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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 because the rule is already in force, 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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

6. A) 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	FY2022	FY2023	FY2024
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			
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

B) Department head approval of regulatory impact analysis:

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

Citation Information

7. 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-22-429	Section 31A-23a-402

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. 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*):

	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	

Issue, or version	
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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*):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. 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 (mm/dd/yyyy): 08/01/2022

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

10. This rule change MAY become effective on (mm/dd/yyyy): 08/08/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

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 *Utah State Bulletin* and delaying the first possible effective date.

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date (mm/dd/yyyy):	06/15/2022
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R590. Insurance, Administration.

R590-93. Replacement of Life Insurance and Annuities.

~~R590-93-1. Authority.~~

~~_____ This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A, Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive, and Subsection 31A-22-429, which gives the commissioner authority to require statements regarding existing insurance and adopt the notice regarding replacement.~~

~~R590-93-2. Purpose and Scope.~~

- ~~_____ (1) The purpose of this rule is:~~
- ~~_____ (a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and~~
 - ~~_____ (b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:~~
 - ~~_____ (i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;~~
 - ~~_____ (ii) reduce the opportunity for misrepresentation and incomplete disclosure; and~~
 - ~~_____ (iii) establish penalties for failure to comply with requirements of Section 31A-22-429 and this rule.~~
 - ~~_____ (2) This rule applies to all insurers and producers doing life insurance and annuity transactions in this state.~~
 - ~~_____ (3) Unless otherwise specifically included, this rule shall not apply to transactions involving:~~
 - ~~_____ (a) credit life insurance;~~
 - ~~_____ (b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of 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. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

- _____ (c) group life insurance and annuities used to fund prearranged funeral contracts;
 - _____ (d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;
 - _____ (e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
 - _____ (f)(i) policies or contracts used to fund:
 - _____ (A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - _____ (B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
 - _____ (C) a governmental or church plan defined in Section 414, a governmental 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 Internal Revenue Code; or
 - _____ (D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - _____ (ii) Notwithstanding Subsection (i), this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;
 - _____ (g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
 - _____ (h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
 - _____ (i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or
 - _____ (j) structured settlements.
- _____ (4) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

R590-93-3. Definitions.

_____ In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

- _____ (1) "Direct response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.
- _____ (2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."
- _____ (3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.
- _____ (4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e). A financed purchase is a replacement.
- _____ (5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.
- _____ (6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated 2006 and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.
- _____ (7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:
 - _____ (i) current death benefit;
 - _____ (ii) annual contract premium;
 - _____ (iii) current cash surrender value;

- ~~_____ (iv) current dividend;~~
- ~~_____ (v) application of current dividend; and~~
- ~~_____ (vi) amount of outstanding loan.~~
- ~~_____ (b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:~~
 - ~~_____ (i) the beginning and end date of the current report period;~~
 - ~~_____ (ii) the policy value at the end of the previous report period and at the end of the current report period;~~
 - ~~_____ (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;~~
 - ~~_____ (iv) the current death benefit at the end of the current report period on each life covered by the policy;~~
 - ~~_____ (v) the net cash surrender value of the policy as of the end of the current report period; and~~
 - ~~_____ (vi) the amount of outstanding loans, if any, as of the end of the current report period.~~
- ~~_____ (8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.~~
- ~~_____ (9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.~~
- ~~_____ (10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:~~
 - ~~_____ (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;~~
 - ~~_____ (b) 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;~~
 - ~~_____ (c) 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;~~
 - ~~_____ (d) reissued with any reduction in cash value; or~~
 - ~~_____ (e) used in a financed purchase.~~
- ~~_____ (11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.~~

~~R590-93 4. Duties of Producers.~~

~~_____ A producer shall comply with Section 31A-22-429.~~

~~R590-93 5. Duties of Insurers that Use Producers.~~

~~_____ Each insurer shall:~~

- ~~_____ (1) maintain a system of supervision and control to insure compliance with the requirements of Section 31A-22-429 and this rule that shall include at least the following:~~
 - ~~_____ (a) inform its producers of the requirements of Section 31A-22-429 and this rule and incorporate the requirements into all relevant producer training manuals prepared by the insurer;~~
 - ~~_____ (b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;~~
 - ~~_____ (c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;~~
 - ~~_____ (d) procedures to confirm that the requirements of Section 31A-22-429 and this rule have been met;~~
 - ~~_____ (e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;~~
- ~~_____ (2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:~~
 - ~~_____ (a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;~~
 - ~~_____ (b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;~~
 - ~~_____ (c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;~~
 - ~~_____ (d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and~~
 - ~~_____ (e) replacements, indexed by replacing producer and existing insurer;~~
- ~~_____ (3) require with or as a part of each application for life insurance or an annuity a signed statement by the applicant as to:~~
 - ~~_____ (a) whether the applicant has existing policies or contracts; and~~
 - ~~_____ (b) whether the proposed life insurance or annuity will replace, discontinue, or change an existing policy or contract;~~
- ~~_____ (4) require with each application for life insurance or annuity that indicates the replacement, discontinuance, or change of an existing policy or contract, a completed notice regarding replacements as contained in Appendix A or Appendix C;~~

- _____ (5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection 31A 22 429(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the signed statement with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
- _____ (6) ascertain that the sales material and illustrations required by Subsection 31A 22 429(5) are complete and accurate for the proposed policy or contract;
- _____ (7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and
- _____ (8) maintain records in any media or by any process that accurately reproduces the actual document.

~~R590-93 6. Duties of Replacing Insurers that Use Producers.~~

- _____ (1) Where a replacement is involved in the transaction, the replacing insurer shall:
 - _____ (a) verify that the required forms are received and are in compliance with this rule;
 - _____ (b) with respect to an electronically completed notice, the replacing insurer shall send a printed copy of the electronically executed notice to the applicant within five business days of the date the notice is received by the company;
 - _____ (c) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;
 - _____ (d) be able to produce copies of the notice regarding replacement required in Subsection 31A 22 429(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
 - _____ (e) provide to the policy or contract holder notice of the right to return the policy or contract within 30 calendar days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A 22 423.
- _____ (2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.
- _____ (3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection 31A 22 429(5) with regard to sales materials, the insurer may:
 - _____ (a) require with each application a statement signed by the producer that:
 - _____ (i) represents that the producer used only company approved sales material; and
 - _____ (ii) states that copies of all sales material were left with the applicant in accordance with Subsection 31A 22 429(4); and
 - _____ (b) within ten business days of the issuance of the policy or contract:
 - _____ (i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection 31A 22 429(4);
 - _____ (ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
 - _____ (iii) stress the importance of retaining copies of the sales material for future reference; and
 - _____ (c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

~~R590-93 7. Duties of the Existing Insurer.~~

- _____ Where a replacement is involved in the transaction, the existing insurer shall:
 - _____ (1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;
 - _____ (2) within 5 business days of receiving a replacement notice, send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or contract holder; and
 - _____ (3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

~~R590-93 8. Duties of Insurers with Respect to Direct Response Solicitations.~~

- _____ (1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not

intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar document filed with the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to file the document with the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent questions regarding existing policies or contracts and whether the proposed insurance will replace, discontinue, or change an existing policy or contract;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer;

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company; or

(f) advising a policy or contract holder to obtain policy values from an existing policy or contract with the intent to indirectly replace the policy or contract without complying with the requirements of this rule.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

R590-93-10. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

R590-93-11. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing the provisions of this revised rule as of the effective date of the changes.]

R590-93-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-22-429, and 31A-23a-402.

R590-93-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) regulate the activities of insurers and producers regarding the replacement of existing life insurance and annuities;

(b) protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct for replacement or financed purchase transactions;

(c) ensure that each purchaser receives information to make a decision in their best interest; and

(d) reduce the opportunity for misrepresentation and incomplete disclosure.

- (2) This rule applies to each insurer and producer transacting life insurance and annuity business in this state.
- (3) Unless otherwise specifically included, this rule does not apply to a transaction involving:
 - (a) credit life insurance;
 - (b) group life insurance or a group annuity if there is no direct solicitation of an individual by a producer;
 - (c) group life insurance or a group annuity used to fund a prearranged funeral contract;
 - (d) an application to exercise a contractual change or a conversion privilege for an existing policy or contract when:
 - (i) the existing policy or contract is being replaced by the same insurer according to a program filed with the commissioner; or
 - (ii) when a term conversion privilege is exercised among corporate affiliates;
 - (e) proposed life insurance to replace life insurance under a binding or conditional receipt issued by the same insurer;
 - (f) except as outlined in Subsection (4), a policy or contract used to fund:
 - (i) an employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act, 29 U.S.C. 1001 (ERISA);
 - (ii) a plan described by Sections 401(a), 401(k), or 403(b) of the Internal Revenue Code, 26 U.S.C. Sec. 25, if the plan, for purposes of ERISA, is established or maintained by an employer;
 - (iii) a governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental 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 Internal Revenue Code; or
 - (iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - (g) new coverage provided under a policy or contract and where the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
 - (h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
 - (i) an immediate annuity that is purchased with proceeds from an existing annuity contract; or
 - (j) a structured settlement.
- (4) Notwithstanding Subsection (3)(f), this rule applies to a policy or contract used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, if:
 - (i) the insurer has been notified that a plan participant may choose from two or more insurers; and
 - (ii) there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy.
- (5) A registered contract is exempt from the requirements of Subsections R590-93-5(1)(b) and R590-93-6(2) regarding the provision of an illustration or policy summary; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular are required instead.

R590-93-3. Definitions.

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

- (1) "Contract" means an annuity contract.
- (2) "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.
- (3)(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 the purpose of 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.
- (4) "Existing insurer" means the insurance company whose policy or contract is changed or affected in a manner described within the definition of "replacement" in Subsection (12).
- (5) "Existing policy or contract" means an individual policy or contract in force, including a policy under a binding or conditional receipt, or a policy or contract that is within an unconditional refund period.
- (6)(a) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy to pay all or part of any premium due on the new policy.
 - (b)(i) A withdrawal, surrender, or borrowing involving the policy values of an existing policy used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy is prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy yields.
 - (ii) The standard in Subsection (i) does not change the monitoring requirements in Subsection R590-93-4(1)(e).
- (c) A financed purchase is a replacement.
- (7) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy over a period of years as defined in Rule R590-177.
- (8) "Policy" means a life insurance policy.
- (9)(a) "Policy summary," for a policy or contract other than a universal life policy, means a written statement regarding a policy or contract that includes the following information:
 - (i) the current death benefit;
 - (ii) the annual contract premium;

- (iii) the current cash surrender value;
- (iv) the current dividend;
- (v) the application of current dividend; and
- (vi) the amount of any outstanding loan.
- (b) "Policy summary," for a universal life policy, means a written statement that includes the following information:
 - (i) the beginning and end date of the current report period;
 - (ii) the policy value at the end of the previous report period and at the end of the current report period;
 - (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, such as interest, mortality, expense, and riders;
 - (iv) the current death benefit at the end of the current report period on each life covered by the policy;
 - (v) the net cash surrender value of the policy as of the end of the current report period; and
 - (vi) the amount of outstanding loans, if any, as of the end of the current report period.
- (10) "Registered contract" means a contract or policy subject to the prospectus delivery requirements of the Securities Act of 1933, 15 U.S.C. Sec. 77a.
 - (11) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that:
 - (a) replaces an existing policy or contract; or
 - (b) is a financed purchase.
 - (12) "Replacement" means a transaction in which a new policy or contract is to be purchased, and the producer or insurer is aware, or should be aware, that an existing policy or contract is or will be:
 - (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
 - (b) 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;
 - (c) amended 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;
 - (d) reissued with any reduction in cash value; or
 - (e) used in a financed purchase.
- (13)(a) "Replacement notice" means the same as the following documents, available on the department's website, <https://insurance.utah.gov>:
 - (i) Appendix A, Important Notice: Replacement of Life Insurance or Annuities;
 - (ii) Appendix B, Notice Regarding Replacement: Replacing Your Life Insurance Policy or Annuity; and
 - (iii) Appendix C, Important Notice: Replacement of Life Insurance or Annuities.
 - (b) The replacement notice shall be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.
- (14) "Sales material" means a sales illustration and any other written, printed, or electronically presented information provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of an Insurer That Uses a Producer.

- (1) Each insurer shall maintain a system of supervision to ensure compliance with the requirements of Section 31A-22-429 and this rule that includes the following:
 - (a) inform each producer of the requirements of Section 31A-22-429 and this rule and incorporate the requirements into each relevant producer training manual prepared by the insurer;
 - (b) provide each producer guidance and a written statement of the company's position regarding the acceptability and appropriateness of a replacement transaction;
 - (c) maintain a system to review the appropriateness of each replacement transaction that a producer does not indicate is in accord with Subsection (1)(b);
 - (d) establish procedures to confirm that the requirements of Section 31A-22-429 and this rule have been met;
 - (e) establish procedures to detect any transaction that is a replacement of an existing policy or contract by the existing insurer, but that has not been reported as such by the applicant or producer;
 - (f) establish procedures to determine that the sales material and illustrations required by Section 31A-22-429 are complete and accurate for the proposed policy or contract; and
 - (g) maintain any record in any means that accurately reproduces the actual document.
- (2) Each insurer shall monitor each producer's policy and contract replacements and make available to the department, upon request, a record of each producer's:
 - (a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
 - (b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
 - (c) annuity contract replacements as a percentage of the producer's total annuity contract sales;
 - (d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-4(1)(e); and
 - (e) replacements, indexed by replacing producer and existing insurer.
- (3)(a) An insurer shall require each application for life insurance or an annuity to include:

- (i) a signed statement by both the applicant and the producer declaring whether or not:
 - (A) the applicant has existing policies or contracts; and
 - (B) the proposed life insurance or annuity will replace, discontinue, or change an existing policy or contract; and
- (ii) a completed replacement notice in Appendix A if there is a replacement, discontinuance, or change of an existing policy or contract.
- (b) When the applicant has an existing policy or contract, an insurer shall maintain for at least five years after the termination or expiration of the proposed policy or contract:
 - (i) any sales material required by Subsection 31A-22-429(5);
 - (ii) the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased; and
 - (iii) the applicant's and producer's signed statement regarding financing and replacement.
- (4) If an application does not meet the requirements of this rule, the insurer shall notify the producer and applicant and fulfill the outstanding requirements.
- (5) Compliance with this rule may include the use of systematic customer surveys, interviews, confirmation letters, or internal monitoring programs.

R590-93-5. Duties of a Replacing Insurer That Uses a Producer.

- (1) If a replacement is involved in a transaction, the replacing insurer shall:
 - (a) verify that the required forms are received and comply with this rule;
 - (b) notify any other insurer who may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement, or when the replacement is identified if not indicated on the application, and send a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;
 - (c) maintain copies of the replacement notice required in Subsection 31A-22-429(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
 - (d) provide to the policy or contract holder notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it.
 - (e) The notice in Subsection (1)(d) may be included in the documents Appendix A or Appendix C.
- (2) Nothing in Subsection (1) preempts the requirements of Section 31A-22-423.
- (3) In a transaction where the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the time elapsed under the replaced policy's or contract's incontestability and suicide periods up to:
 - (a) the face amount of the existing policy or contract; or
 - (b) in the case of a financed purchase, the reduction in the face amount of the existing policy due to the use of existing policy values to fund the new policy or contract.
- (4) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection 31A-22-429(5) regarding sales materials, the insurer may:
 - (a) require with each application a statement signed by the producer that:
 - (i) represents that the producer used only company-approved sales material; and
 - (ii) states that copies of all sales material were left with the applicant in accordance with Subsection 31A-22-429(4);
 - (b) within ten business days of the issuance of the policy or contract:
 - (i) a person whose duties are separate from the marketing area of the insurer shall notify the applicant that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection 31A-22-429(4);
 - (ii) provide the applicant a toll-free number to contact company compliance personnel; and
 - (iii) stress the importance of retaining copies of the sales material for future reference; and
 - (c) maintain a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-6. Duties of the Existing Insurer.

- If a replacement is involved in a transaction, the existing insurer shall:
 - (1) retain each replacement notification received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of the existing insurer's state of domicile, whichever is later;
 - (2) within five business days of receiving a replacement notification, notify the policy or contract holder of the right to receive information regarding the existing policy or contract values including an in-force illustration or a policy summary if an in-force illustration cannot be produced;
 - (3) provide the policy or contract information in Subsection (2) within five business days of receipt of the request from the policy or contract holder; and
 - (4) upon receipt of a request to borrow, surrender, or withdraw any policy values, send a notice advising the policyholder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount, or surrender value of the policy from which the values are released.
 - (a) The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder.

(b) In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-7. Duties of an Insurer Regarding a Direct-Response Solicitation.

(1)(a) When an application is initiated from a direct-response solicitation, the insurer shall require with each completed application for a policy or contract, a statement asking whether the applicant intends to replace, discontinue, or change an existing policy or contract.

(b) If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the replacement notice in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide an applicant or prospective applicant a replacement notice in Appendix C, or other substantially similar document filed with the commissioner; and

(b) comply with the requirements of Subsection R590-93-5(1)(b), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-5(1)(c), R590-93-5(1)(d), and R590-93-5(2).

(3)(a) In an instance described in Subsection (2), an insurer may delete any reference to the producer, including the producer's signature, and any reference not applicable to the product being sold or replaced, without having to file the document with the commissioner.

(b) The insurer's obligation to obtain the applicant's signature is satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the replacement notice.

R590-93-8. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, the inconsistent portion shall be interpreted to provide the greatest information or protection to the policyholder.

R590-93-9. Severability.

If any provision of this rule, Rule R590-93, 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: life insurance, annuity replacement

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