

RULE 98
ANNUITY DISCLOSURE

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Section 1. Purpose

The purpose of this rule is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The rule specifies the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this rule is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

Section 2. Authority

This rule is issued based upon the authority granted the commissioner under Ark. Code Ann. §§ 23-66-207, 23-61-108, and the Arkansas Administrative Procedures Act, §§ 25-15-201, *et seq.*

Section 3. Applicability and Scope

This rule applies to all group and individual annuity contracts and certificates except:

- A. Registered or non-registered variable annuities or other registered products;
- B. Immediate and deferred annuities that contain no nonguaranteed elements;
- C. (1) Annuities used to fund:
 - (a) An employee pension plan which is covered by the Employee Retirement 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 or a deferred compensation plan of a state or local government or a 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.
- (2) Notwithstanding Paragraph (1), the 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 where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers 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.
- D. Structured settlement annuities; and
- E. Any annuity contract or certificate that is issued to fund a prepaid funeral benefits contract as defined in Ark. Code Ann. § 23-40-103(10) or any similar annuity contract written through or in connection with a funeral home with the purpose of providing funds for final expenses and having similar underwriting characteristics as prepaid funeral benefits contracts.

Section 4. Definitions

For the purposes of this rule:

- A. “Buyer’s Guide” means the free guide available at the Arkansas Insurance Department or online at www.insurance.arkansas.gov titled “Buyer’s Guide to Fixed Deferred Annuities.”
- B. “Contract owner” means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.
- C. “Determinable elements” means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any 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 it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

- D. “Generic name” means a short title descriptive of the annuity contract being applied for or illustrated such as “single premium deferred annuity.”
- E. “Guaranteed elements” means the premiums, credited interest rates (including any 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.
- F. “Non-guaranteed elements” means the premiums, credited interest rates (including any 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 non-guaranteed elements are used in its calculation.
- G. “Structured settlement annuity” means a “qualified funding asset” as defined in Section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

Section 5. Standards for the Disclosure Document and Buyer’s Guide

- A. (1) 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 B and the Buyer’s Guide.
- (2) 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 Buyer’s Guide no later than five (5) business days after the completed application is received by the insurer.
 - (a) With respect to an application received as a result of a direct solicitation through the mail:
 - (i) 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 Buyer’s Guide be provided no later than five (5) business days after receipt of the application.
 - (ii) 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 (5) business days after receipt of the application.

- (b) With respect to an application received via the Internet:
 - (i) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days of receipt of the application.
 - (ii) 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 (5) 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 proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer or the Arkansas Insurance Department for a free annuity Buyer's Guide.
- (3) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than ten (10) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or rule.

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

- (1) The generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;
- (2) The insurer's name and address;
- (3) A description of the contract and its benefits, emphasizing its long-term nature, including the following examples where appropriate:
 - (a) The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;
 - (b) 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;

- (c) Periodic income options both on a guaranteed and non-guaranteed basis;
 - (d) Any value reductions caused by withdrawals from or surrender of the contract;
 - (e) How values in the contract can be accessed;
 - (f) The death benefit, if available, and how it will be calculated;
 - (g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and
 - (h) Impact of any rider, such as a long-term care rider.
- (4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply.
 - (5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.
- C. Whenever projections for non-guaranteed elements of a contract are provided in the disclosure statement, equal prominence must be given to guaranteed elements.
 - D. Terms used in the disclosure statement must be defined in clear and concise language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.
 - E. The disclosure statement must be dated and signed by the insurance producer and maintained by both the producer and the issuing company for a period of five (5) years.

Section 6. Report to Contract Owners

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

- A. The beginning and end date of the current report period;
- B. 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;
- C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

D. The amount of outstanding loans, if any, as of the end of the current report period.

Section 7. Penalties

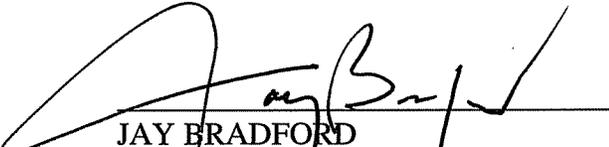
In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this rule shall be guilty of a violation of the Trade Practices Act, Ark. Code Ann. §§ 23-66-201, *et seq.*

Section 8. Separability

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the rule and its application to other persons or circumstances shall not be affected.

Section 9. Effective Date

This rule shall become effective July 15, 2009, and shall apply to contracts sold on or after the effective date.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS



DATE