

Producer Advisory



Date: October 15, 2009
To: Producers Licensed to Sell Individual Annuities in Arkansas
Individual Annuity Department
From: Bill Douglas, FLMI, FFSI, AIRC, AAPA, ACS, CCP
Compliance Manager, Individual Annuities

State: Arkansas
Bill: Rule 97
Effective: January 1, 2010
Subject: Replacement of Annuity Sales

Purpose

To implement rules regarding life and annuity sales when a replacement is involved.

Producer Summary

Arkansas recently adopted Rule 97 that updates requirements for replacement sales of life insurance and annuities to reflect the NAIC Replacement Regulation, **with the addition of providing a policy/contract comparison**. The new replacement requirements include:

- 30-day free-look period for replacements.
- A new replacement notice.
- **Agent** requirements — provide the replacing carrier with:
 - A listing of any carrier-approved preprinted or electronically presented materials used in the transaction.
 - Copy of replacement form, *even if there are no in-force life and/or annuity policies or the in-force life and/or annuity coverage is not being replaced*.
 - If no coverage is in-force, simply mark “no coverage in-force” on the replacement form, obtain signatures from applicant and agent, and submit with the application.
 - If coverage is in-force but not used as a replacement, read replacement notice to the applicant, mark that other coverage is in force and no replacement is involved, obtain signatures from applicant and agent, and submit with the application.

1100 SW Sixth Avenue
Portland OR 97204
tel 800.378.4578

Producer Advisory

- Copies of any “individualized” sales materials used in the transaction (including any illustrations related to the specific contract).

Note that the replacement form for Arkansas does include a policy/contract comparison section. This must be completed thoroughly and as applicable to the replaced contract and the replacing contract.

You will soon be able to access our new Arkansas replacement form number 14937 on Standard Insurance Company’s website.

Please use the replacement form with all Arkansas new business with applications signed on January 1, 2010, or later. A copy must be submitted to us along with the application.

We encourage you to visit the “News” section of our website for additional Producer Advisories that have been developed and posted for your purposes so that you have the latest information regarding state requirements on a number of our business practices.

[The Standard’s Individual Annuities News](#)

Thank you for your continued business and for ensuring that The Standard’s operations comply with applicable statutory and regulatory requirements. If you have any questions about this Producer Advisory, please feel free to contact me at 800.378.4578, ext. 7427.

Have a great day!

1100 SW Sixth Avenue
Portland OR 97204
tel 800.378.4578

Standard Insurance Company — a subsidiary of StanCorp Financial Group, Inc.

Detailed Compliance Advisory

Detailed Analysis

Carrier requirements:

- For at least five years after the termination or expiration of the replacing life insurance policy or annuity contract, be able to produce:
 - Copies of any sales material used in the replacement transaction.
 - Basic illustration and supplemental illustrations related to the coverage.
 - Agent's and applicant's signed statements relative to financing and replacement (i.e., replacement notice).
- Be able to produce the replacement notice, indexed by agent, for five years or until the next regular Insurance Division examination, whichever is later.
- Maintain and supervise a system/process to ensure compliance with the replacement coverage requirements.

Replacement means a transaction in which a new life insurance policy or annuity contract is to be purchased by which an existing life insurance policy or annuity contract has been or will be:

- Lapsed, forfeited, surrendered (including a partial surrender), assigned to the replacing carrier or otherwise terminated;
- 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;
- Amended to result in a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would have been paid;
- Reissued with any reduction in cash value; or
- Used in a financed purchase.
 - 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. **Note:** With respect to a new policy owned by the same policy/contract owner and issued by the same carrier within four months before or 13 months after that policy's effective date, a withdrawal, surrender or borrowing of policy/contract values to pay premiums on such new policy will be considered a financed purchase.

Exempt coverages/transactions:

- Credit life insurance.
- Group life insurance and group annuities, PROVIDED there is no direct solicitation of individuals by an agent. **Note:** Group life insurance and group annuities marketed through direct response solicitation are subject to the replacement rules.
- An application to the carrier 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 carrier pursuant to a program filed with and approved by the Insurance Division.
- Proposed life insurance that is to replace life coverage under a binding or conditional receipt issued by the same carrier.

Detailed Compliance Advisory

- Policy or contracts used to fund:
 - An employee pension or welfare benefit plan subject to ERISA.
 - 401(a), 401(k), and 403(b) plans established and maintained by an employer, subject to ERISA.
 - A governmental or church plan under IRC 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 IRC section 457.
 - A nonqualified deferred compensation arrangement established and maintained by an employer or plan sponsor.
 - **Note:** Notwithstanding the above list, the replacement rules will apply to policies or contracts used to fund any plan or arrangement that is funded solely by employee contributions (whether pre-tax or post-tax), and when the carrier has been notified that participants may select from two or more carriers and there is a direct solicitation by an agent.
- New coverage provided under a life insurance policy or contract when the entire cost is borne by the employer or association.
- Existing life coverage that is non-convertible term coverage which will expire in five years or less and may not be renewed.
- Immediate annuities that are purchased with the proceeds from an existing annuity contract. **Note:** Immediate annuities that are purchased with the proceeds from an existing life insurance policy are not exempted from the replacement requirements.
- Structured settlements.

Duties of Agents:

- Submit an application to the carrier, signed by both the applicant and the agent, that requests whether the applied for coverage replaces existing coverage. Submit the replacement notice to the carrier if the applicant has existing coverage in-force, **even if the existing coverage will not be replaced.** **Note:** *If the answer is “no,” the agent’s duties with respect to replacement rules have been completed.*
- If there is a replacement:
 - At time of application, present and read the Replacement Notice to the applicant.
 - The Replacement Notice must be signed by both the agent and the applicant, attesting that the notice was read aloud by the agent to the applicant or that the applicant did not wish the notice to be read aloud.
 - A copy of the Replacement Notice must be left with the applicant.
 - At time of application, leave a copy of all sales materials with the applicant. **Note:** Electronically presented sales materials must be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.
 - Provide to the replacing carrier: (a) a copy of the signed Replacement Notice; (b) a statement identifying any preprinted or electronically presented carrier-approved materials used in the transaction; and (c) copies of any “individualized” sales materials (including any illustrations related to the specific policy or contract purchased).

Detailed Compliance Advisory

Duties of Carriers using Agents:

- Maintain and supervise a system/process to:
 - Ensure compliance with application replacement rules.
 - Inform agents of replacement requirements, including incorporating replacement requirements into applicable training programs.
 - Provide each agent with a written statement regarding the carrier's position relative to the acceptability of replacements (providing guidance to its agents regarding the appropriateness of replacement transactions).
 - Include a process of review relative to the appropriateness of each replacement transaction.
 - Include procedures to ensure that replacement rules have been met; and
 - Include procedures to detect replacement transactions that have not been reported as such by the applicant or agent (e.g. customer surveys, interviews, confirmation letters, internal audits).
- Have the capacity to monitor each agent's replacement transactions, including producing records for the Insurance Division (upon request) with respect to each agent:
 - Life replacements, including financed purchases, as a percentage of the agent's total annual sales of life coverage;
 - Number of life insurance policy lapses, as a percentage of the agent's total annual sales of life coverage;
 - Annuity contract replacements, as a percentage of the agent's total annual sales of annuities;
 - Number of unreported replacement transactions detected by the carrier's monitoring system; and
 - Replacements, indexed by replacing agent and replaced carrier.
- Obtain a statement signed by the applicant and agent as to whether the applicant has existing life insurance policies or annuity contracts.
- Obtain a copy of the Replacement Notice signed by the applicant and agent.
- For at least five years after the termination or expiration of the replacing life insurance policy or annuity contract, be able to produce:
 - Copies of any sales material used in the replacement transaction.
 - Basic illustration and supplemental illustrations related to the policy or contract.
 - Agent's and applicant's signed statements relative to financing and replacement.
- Determine that sales materials and illustrations are compliant, complete and accurate.
- Notify agent and applicant if the application does not meet the applicable requirements.
- Be able to provide a copy of or reproduce the life insurance policy or annuity contract.

Duties of Replacing Carriers that use Agents:

- Verify that the required forms are received and are in compliance.
- Notify any other existing carriers of the replacement within five business days of receipt of the application (or when a replacement is identified even if not noted on the application).

Detailed Compliance Advisory

- Provide the existing carrier(s) with a copy of the available illustration or policy summary or available disclosure document for the proposed contract within five business days of the request.
- Be able to produce the Replacement Notice, indexed by agent, for (a) at least five years or until (b) the next regular Insurance Division examination, whichever is later.
- Notify the policy/contract owner of the right to return the policy/contract within 30 days of delivery.
 - Full refund required, i.e. all premiums or considerations paid, included in policy fees or charges. **Note:** In the case of a variable or market value adjustment life insurance policy or annuity contract, full refund includes a payment of the cash surrender value, plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract.
 - 30-day return notice may be included in Replacement Notice.

When the replacing carrier and the existing carrier are the same (or are subsidiaries or affiliates under common ownership or control), the replacing carrier will allow credit for time served with respect to incontestability and any suicide limitation. **Note:** With respect to a financed purchase, such credit may be limited to (a) the face amount of the existing policy, reduced by (b) the amount applicable to the use of existing policy values.

If carrier does not allow use of sales materials other than those specifically approved by the carrier, in lieu of last item listed under the Duties Of Agents section, the carrier may:

- Require with each application a statement signed by the agent that
 - Represents the agent used only carrier-approved sales material, and
 - States that copies of all sales material were left with the applicant.
- Within 10 days of issuance of the policy or contract:
 - Notify the applicant (either in writing or verbally by a person whose duties are separate from marketing) that the agent has represented that copies of all sales material have been left with the applicant.
 - Provide the applicant with a toll-free number to contact carrier personnel if the carrier is not able to provide the above communication.
 - Stress to the applicant the importance of retaining copies of sales material for future reference.

Note: For any carrier that allows carrier-approved sales materials only, such carrier must be able to produce a copy of the letter or other verification sent to the applicant regarding the applicant communication noted above.

Duties of Existing Carriers:

- Retain and be able to produce all replacement notifications received, indexed by replacing carrier, for (a) at least five years or until (b) the conclusion of the next regular examination by Insurance Department in its state of domicile, whichever is later.
- Send a letter to the policy/contract owner of the right to receive information regarding existing policy/contract values (including, an in-force illustration or policy summary if an in force illustration cannot be produced) within five business days of receipt of a notice that an existing policy/contract is being replaced. **Note:** Such illustration or policy summary must be provided within five business days of the request.

Detailed Compliance Advisory

- Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice advising the policyowner 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. Such notice is to be sent separate from the check if the check is sent to anyone other than the policyowner. **Note:** In the case of consecutive automatic premium loans, such notice is required only at the time of the first loan.