
Rules of
Department of Insurance,
Financial Institutions and
Professional Registration
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures

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**Title 20—DEPARTMENT OF
INSURANCE, FINANCIAL
INSTITUTIONS AND
PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material
Disclosures**

20 CSR 400-5.100 Life Insurance Advertising

PURPOSE: These rules set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of material and relevant information in the advertising of life insurance policies and annuity contracts and to specify the criteria by which the Missouri Department of Insurance will evaluate life insurance advertising. This rule was adopted pursuant to the provisions of section 374.045, RSMo and to implement sections 375.934 and 375.936, RSMo.

(1) Definitions for the Purpose of These Rules.

(A) Advertisement shall be material designed to create public interest in life insurance or annuities or in an insurer or to induce the public to purchase, increase, modify, reinstate or retain a policy including:

1. Printed and published material, audio-visual material and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;
2. Descriptive literature and sales aids of all kinds issued by an insurer or insurance producer, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations and form letters;
3. Material used for the recruitment, training and education of an insurer's sales personnel, and insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate or retain a policy; and
4. Prepared sales talks, presentations and material for use by sales personnel and insurance producers.

(B) Advertisement for the purpose of these rules shall not include:

1. Communications or materials used within an insurer's own organization and not intended for dissemination to the public;
2. Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate or retain a policy; and
3. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or

arranged; provided the announcement clearly indicates that it is preliminary to the issuance or a booklet explaining the proposed coverage.

(C) Insurer shall include any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society and any other legal entity which is defined as an insurer in the insurance code of this state or issue life insurance or annuities in this state and is engaged in the advertisement of a policy.

(D) Policy shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides for life insurance or annuity benefits.

(2) Applicability.

(A) These rules shall apply to any life insurance or annuity advertisement intended for dissemination in this state.

(B) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All these advertisements, regardless of by whom written, created, designed or presented shall be the responsibility of the insurer.

(3) Form and Content of Advertisements.

(A) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive as used in this rule shall be determined by the director of insurance from the overall impression that the advertisement reasonably may be expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(B) No advertisement shall use the terms investment, investment plan, founder's plan, charter plan, expansion plan, profit, profits, profit sharing, interest plan, savings plan or other similar terms in connection with a policy in a context or under circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of the policy to believe that s/he will receive or that it is possible that s/he will receive, something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

(4) Disclosure Requirements.

(A) The information required to be disclosed by these rules shall not be minimized, obscured or presented in an ambiguous fashion

or intermingled with the text of the advertisement so as to be confusing or misleading.

(B) No advertisement shall omit material information or use words, phrases, statements, references or illustrations if this omission or the use has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable or state or federal tax consequences. The fact that the policy offered is made available to prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied, does not correct or remedy misleading statements.

(C) In the event an advertisement uses non-medical, no medical examination required or similar terms where issue is not guaranteed, those terms shall be accompanied by a further disclosure of equal prominence and in juxtaposition to the effect that issuance of the policy may depend upon the answers to the health questions.

(D) An advertisement shall not use as the name or title of a life insurance policy any phrase which does not include the words life insurance unless accompanied by other language clearly indicating it is life insurance.

(E) An advertisement shall prominently describe the type of policy advertised.

(F) An advertisement of an insurance policy marketed by the direct response technique shall not state or imply that because there is no insurance producer or commission involved there will be a cost saving to prospective purchasers unless that is the fact. No cost savings may be stated or implied without justification satisfactory to the director of insurance prior to use.

(G) An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, that fact shall be prominently disclosed.

(H) An advertisement for a policy with nonlevel premiums shall prominently describe the premium changes.

(I) Dividends.

1. An advertisement shall not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead.

2. An advertisement shall not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or



estimates of dividends to be paid in the future.

3. An advertisement shall not state or imply that illustrated dividends under a participating policy, pure endowment, or both, will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains what benefits or coverage would be provided at that time and under what conditions this would occur.

(J) An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company.

(K) Testimonials or Endorsements by Third Parties.

1. Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial, the insurer makes as its own all of the statements contained in it and these statements are subject to all the provisions of these rules.

2. If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise or receives any benefit directly or indirectly other than required union scale wages, this fact shall be disclosed in the advertisement.

3. An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the insurer or receives any payment or other consideration from the insurer for making the endorsement or testimonial, this fact shall be disclosed in the advertisement.

(L) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified.

(M) Introductory, Initial or Special Offers and Enrollment Periods.

1. An advertisement of an individual policy or combination of these policies shall not state or imply that the policy or combination of policies is an introductory, initial or special offer or that applicants will receive substantial advantages not available at a later date or that the offer is available only to a specified group of individuals, unless that is

the fact. An advertisement shall not describe an enrollment period as special or limited or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.

2. An advertisement shall not state or imply that only a specific number of policies will be sold or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

3. An advertisement shall not offer a policy which utilizes a reduced premium rate in a manner which over-emphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.

4. An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than three (3) months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than ten (10) days and not more than forty (40) days following the date on which the enrollment period is advertised for the first time. This rule applies to all advertising media—that is, mail, newspaper, radio, television, magazines and periodicals—by any one (1) insurer. The phrase any one (1) insurer includes all the affiliated companies of a group of insurance companies under common management or control. This rule does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be acceptable by an insurer in those instances where the application has been sent to the applicant in response to his/her request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group, blanket or franchise insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this rule shall be applied separately to each sponsoring organization.

(N) An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group or quasi-group and as such enjoy special rates, dividends or underwriting privileges, unless that is the fact.

(O) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends or rates of other insurers. An advertisement shall not falsely or unfairly describe other insurers, their policies, services or methods of marketing.

(P) For individual deferred annuity products or deposit funds, the following shall apply:

1. Any illustrations or statements containing or based upon interest rates higher than the guaranteed accumulation interest rates likewise shall set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. These higher interest rates shall not be greater than those currently being credited by the company unless the higher rates have been publicly declared by the company with an effective date for new issues not more than three (3) months subsequent to the date of declaration;

2. If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it also shall disclose in close proximity and with equal prominence, the actual relationship between the gross and net premiums; and

3. If any contract does not provide a cash surrender benefit prior to commencement of payment of any annuity benefits, any illustrations or statements concerning the contract shall prominently state that cash surrender benefits are not provided.

(5) Identity of Insurer.

(A) The name of the insurer shall be clearly identified in each advertisement and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

(B) No advertisement shall use any combination of words, symbols or physical materials which by their content, phraseology,



shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with that governmental program or agency.

(6) Jurisdiction Licensing and Status of Insurer.

(A) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

(B) An advertisement may state that an insurer is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing insurers may not be so licensed.

(C) An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claims or the merits, desirability or advisability of its policy forms or kinds of plans of insurance are currently or have been recommended or endorsed by any governmental entity unless that is the fact. However, when a governmental entity has recommended or endorsed a policy form or plan, that fact may be stated if the entity authorized its recommendation or endorsement to be used in an advertisement.

(7) Statements About the Insurer. An advertisement shall not contain statements, pictures or illustrations which are false or misleading in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope, basis and extent of the recommendation.

(8) Enforcement Procedures.

(A) Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its individual policies and specimen copies of typical printed, published or prepared advertisements of its blanket, franchise and group policies disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. This file shall be subject to inspection by the director or his/her lawfully appointed agents. All these advertisements shall be maintained in the file for a period of either three (3) years or until the filing of the next

regular report on examination of the insurer, whichever is the longer period of time.

(B) Each insurer subject to the provisions of these rules shall file with the director with its annual statement a certificate executed by an authorized officer of the insurer where it is stated that to the best of his/her knowledge, information and belief, the advertisements which were disseminated by or on behalf of the insurer in this state during the preceding statement year or during the portion of that year when these rules were in effect, complied or were made to comply in all respects with the provisions of these rules and the insurance laws of this state as implemented and interpreted by these rules.

(9) Conflict With Other Rules. It is not intended that these rules conflict with or supersede any rules currently in force or subsequently adopted in this state governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules dealing with life insurance cost comparison indices, deceptive practices in the sales of life insurance and replacement of life insurance policies. Consequently, no disclosure required under any such rules shall be deemed to be an advertisement within the meaning of these rules.

AUTHORITY: sections 374.045, 375.934 and 375.936, RSMo 2000. This rule was previously filed as 4 CSR 190-13.020. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed July 9, 1976, effective Feb. 20, 1977. Amended: Filed July 12, 2002, effective Jan. 30, 2003.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995; 375.934, RSMo 1959, amended 1978, 1991; and 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991.*

20 CSR 400-5.200 Deceptive Practices or Misrepresentations in the Solicitation of Life Insurance

PURPOSE: This rule describes those statements which will be considered to be deceptive practices or misrepresentations in the solicitation of life insurance. This rule was adopted pursuant to the provisions of section 374.045, RSMo and implements and defines sections 375.930-375.948, 376.500, 376.590 and 376.673, RSMo.

(1) No insurance company shall deliver or issue in this state or permit its insurance producers or officers to deliver or promise to issue or deliver in this state its own stock or other stock or securities as an inducement to the purchase of insurance. No corporation or

any of its insurance producers, officers or employees shall agree to sell, offer to sell, or give or offer, directly or indirectly, in any manner whatsoever any share of stock, securities or bonds as an inducement to the purchase of insurance.

(2) The practices and representations enumerated and listed in this rule are deemed to violate those sections of the Missouri Insurance Code set out in this rule and violations of same by companies or their insurance producers shall subject the violators to the penalties now contained in section 375.930, RSMo. Violations of same will consist of any of the following statements:

(A) Statements of policy titles indicating or implying that the policyholder will participate in the distribution of earnings or surplus other than earnings or surplus attributable, by reasonable and nondiscriminatory standards, to the participating policies of the company and allocated to the policyholder on reasonable and nondiscriminatory standards;

(B) Statements or illustrations implying that a proposed policyholder will be entitled to share in any part of surplus earnings attributable to nonparticipating business or to other classes of participating business;

(C) Statements or illustrations setting forth the dividend scale of other companies (or a dividend scale of the company for a plan of insurance no longer being offered or for a plan of insurance other than the plan being offered to the proposed policyholder) with the implication that these statements or illustrations serve as some sort of a guideline as to what the proposed policyholder might expect to receive under the proposed policy;

(D) Statements or representations or the use of any documents (either in the form of a copy of a board resolution, certificate of participation or in any other manner whatsoever) in conjunction with the solicitation or issuance of a life insurance policy which purport that the policyholder will or might reasonably expect to receive any valuable consideration or inducement whatever, not specified in the policy contract of insurance;

(E) Statements which do not clearly inform one that dividends are not, and cannot be, guaranteed;

(F) Statements which purport or imply that accumulated dividends will be sufficient, after an unreasonably short period of time, to require no further cash outlay for the payment of premiums;

(G) Statements which purport or imply that the anticipated annual dividend will equal or exceed the annual premium due under the policy, except in those cases where the company's current rate manual so reflects;



(H) Statements indicating or implying that the policyholder will receive some preferential or discriminatory advantage or benefit not available to persons who purchase insurance from the company at future dates or under other circumstances;

(I) Statements or representations purporting that only a limited number of policies will be issued on a particular form (however true the statements might be) since those statements imply preferential treatment;

(J) References to the investment nature of a policy which state or imply that a life insurance policy possesses investment features other than those arising from the cash, loan or maturity value or the settlement options available thereunder;

(K) Statements which tend to lead the prospect to believe that the insurance producer is dealing in other than a life insurance contract or that life insurance is incidental to the purchase of the contract;

(L) Statements which tend to lead the prospect to believe that s/he is purchasing stock of the insurance company or that s/he is acquiring any right or benefit which corresponds to a right or benefit enjoyed by a stockholder of the company;

(M) References to premiums as deposits in a manner as to lead the proposed policyholder to believe that they create a fund which is withdrawable without reference to the cash surrender or loan provisions of the policy or the use of any passbook savings record or any other device which leads or would tend to lead the policyholder to believe or gain the impression that the contract represents a savings plan;

(N) Statements or representations that any part of premium payment, advance premium payment or of dividends will be placed in a segregated fund for the benefit of the insureds (except for those variable contracts which might be issued pursuant to section 376.309, RSMo);

(O) Statements which tend to lead a prospect to believe or infer that each policyholder is given the right to purchase or allocate a specific number of policies;

(P) The use of comparative selling in a manner which might lead a prospect to believe that the company's experience under a particular plan will be as successful as the experience achieved under a similar plan by reference to a particular company; and

(Q) Any comparison of the policies or contracts of any such insurer(s), shall be deemed to be an incomplete comparison, if it does not compare in detail the gross premiums and gross premiums less any dividend or other reduction allowed by the insurer(s), at the date of the comparison and the increase in

any cash values and all the benefits provided by each of those policies or contracts for a period of twenty (20) years. The omission from any comparison of any benefit or value provided in any such policies or contracts or of any differences as to amount or period of payment of premiums shall constitute the comparison an incomplete comparison.

(3) With respect to life insurance policies providing for the payment of a series of pure endowments maturing periodically during the premium paying period of the policy companies are prohibited from—

(A) Using any detachable coupons, certificates or passbooks or any other device which tends to emphasize the periodic pure endowment benefits or which tend to create the impression that the pure endowments represent interest earnings or anything other than benefits which have been purchased by part of the policyholder's premium payments;

(B) Offering pure endowment benefits which do not have fixed maturity dates or the payment of which is made contingent upon the payment of any premium becoming due on or after their maturity dates; or

(C) Expressing pure endowment benefits in any manner other than in dollar amounts such as by expressing them as percentages of other quantities or in other ways.

(4) Each insurer shall notify each of its insurance producers of the contents of this rule.

AUTHORITY: sections 374.045, 375.930, 375.948, 376.500, 376.590 and 376.673, RSMo 2000. This rule was previously filed as 4 CSR 190-13.030. This version of rule filed Dec. 5, 1969, effective Dec. 15, 1969. Amended: Filed Aug. 5, 1974, effective Aug. 15, 1974. Amended: Filed July 12, 2002, effective Jan. 30, 2003.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995; 375.930, RSMo 1959, amended 1978, 1991; 375.948, RSMo 1959, amended 1978, 1991; 376.500, RSMo 1939, amended 1965; 376.590, RSMo 1939; and 376.673, RSMo 1967.*

20 CSR 400-5.300 Solicitation of Insurance on Military Installations in Missouri

PURPOSE: This rule clarifies by whom insurance on military installations may be solicited. This rule was adopted pursuant to the provisions of section 374.045, RSMo and implements sections 375.012-375.158, RSMo.

(1) Army regulation No. 210-8, effective February 15, 1973 and Air Force regulation No. 211-16, dated March 31, 1972, relate to

solicitation on military installations; local rules implement the rules referred to here.

(2) Solicitation of insurance on military installations or bases in Missouri shall only be done by authorized insurance producers duly licensed by the Missouri Department of Insurance and the policy and application forms used by these insurance producers must be approved by the Missouri Department of Insurance.

AUTHORITY: sections 374.045, RSMo 2000, and 375.012-375.158, RSMo 2000, Supp 2001 and Supp. 2002. This rule was previously filed as 4 CSR 190-13.050. Original rule filed July 27, 1964, effective Aug. 6, 1964. Amended: Filed Dec. 5, 1969, effective Dec. 15, 1969. Amended: Filed Aug. 5, 1974, effective Aug. 15, 1974. Amended: Filed July 12, 2002, effective Jan. 30, 2003.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995 and 375.012-375.158, see Missouri Revised Statutes.*

20 CSR 400-5.305 Scope and Definitions for Military Sales Practices Regulation

PURPOSE: This rule sets out the scope of the military sales practices regulation in 20 CSR 400-5.305 to 20 CSR 400-5.310 and provides definitions to aid in the interpretation of the rules.

(1) Applicability of Rules. The rules in 20 CSR 400-5.305 to 20 CSR 400-5.310 are based upon the Military Sales Practices Model Regulation adopted by the National Association of Insurance Commissioners (NAIC), published July 2007, fulfilling the intent of the Military Personnel Financial Services Act, Pub. L. No. 109-290, section 3(1)(C) (2006).

(A) The rules in 20 CSR 400-5.305 to 20 CSR 400-5.310 apply to insurers soliciting, offering to sell or selling any life or annuity product, except those described in subsection (1)(B), to a member of the United States Armed Forces, wherever located. The rules shall be read together with Chapter 536, RSMo.

(B) The rules in 20 CSR 400-5.305 to 20 CSR 400-5.310 shall not apply to solicitations or sales involving:

1. Credit insurance;
2. Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
3. 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;

4. Individual stand-alone health policies, including disability income policies;

5. Contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

6. Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501(c)(23) of the *Internal Revenue Code* (IRC), and which are not underwritten by an insurer; or

7. 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), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer and there is no in-person, face-to-face solicitation of individuals by an insurance producer;

C. A government or church plan defined in Section 414 of the IRC, a government 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 IRC, if there is no in-person, face-to-face solicitation of individuals by an insurance producer;

D. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

E. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

F. Prearranged funeral contracts.

(C) The rules in 20 CSR 400-5.305 to 20 CSR 400-5.310 shall not apply to:

1. General advertisements, direct mail and Internet marketing; and

2. Telephone marketing, provided the caller explicitly and conspicuously discloses that the call concerns life insurance and makes no statement that avoids the clear and unequivocal statement that life insurance is the subject matter of the solicitation.

3. Nothing in this subsection shall be construed to exclude an insurer or insurance producer from 20 CSR 400-5.305 to 20 CSR 400-5.310 in any in-person, face-to-face meeting established as a result of the marketing that is exempt under this paragraph.

(D) Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DoD INSTALLATIONS or successor directive.

(2) Definitions. As used in rules 20 CSR 400-5.305 to 20 CSR 400-5.310 the following terms shall mean:

(A) "Active duty," full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than thirty-one (31) calendar days;

(B) "Department of Defense (DoD) Personnel," all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense;

(C) "Door to door," a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment;

(D) "General advertisement," an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer;

(E) "Insurable needs," the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents;

(F) "Insurer," an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities;

(G) "Insurance producer," a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities;

(H) "Known" or "Knowingly," depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

1. Is a service member; or

2. Is a service member with a pay grade of E-4 or below;

(I) "Life insurance," insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities;

(J) "Military installation," any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters;

(K) "MyPay," a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms;

(L) "Other military survivor benefits," includes the following, but is not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits;

(M) "Service member," any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces;

(N) "SGLI," Servicemembers' Group Life Insurance;

(O) "Side fund," a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

1. Accumulated value or cash value or secondary guarantees provided by a universal life policy;

2. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

3. A premium deposit fund which:

A. Contains only premiums paid in advance which accumulate at interest;

B. Imposes no penalty for withdrawal;

C. Does not permit funding beyond future required premiums;

D. Is not marketed or intended as an investment; and

E. Does not carry a commission, either paid or calculated;

(P) "Specific appointment," a prearranged appointment agreed upon by both parties and definite as to place and time;



(Q) “United States Armed Forces,” all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard; and

(R) “VGLI,” Veterans’ Group Life Insurance.

AUTHORITY: sections 374.045, 375.934, and 375.936, RSMo 2000 and section 375.144, RSMo Supp. 2007. Original rule filed Nov. 9, 2007, effective June 30, 2008.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995; 375.934, RSMo 1959, amended 1978, 1991; 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991; and 375.144, RSMo 2005.*

20 CSR 400-5.310 Deceptive or Unfair Military Sales Practices

PURPOSE: This rule describes specific acts and practices that constitute deceptive or unfair trade practices and is based upon the Military Sales Practices Model Regulation adopted by the NAIC during July 2007. The specific prohibitions are not intended to be an all-inclusive list of conduct which might violate sections 375.144 or 375.934, RSMo, but rather provide clear notice to insurers and insurance producers of conduct that would constitute a deceptive or unfair trade practice.

(1) Unfair Trade Practices on a Military Installation.

(A) Untrue, Deceptive or Misleading Representations. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Knowingly soliciting the purchase of any life insurance product “door to door” or without first establishing a specific appointment for each meeting with the prospective purchaser;

2. Soliciting service members in a group or “mass” audience or in a “captive” audience where attendance is not voluntary;

3. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;

4. Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;

5. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander’s designee;

6. Posting unauthorized bulletins, notices or advertisements;

7. Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885; or

8. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer’s files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the Department of Defense (DoD) or any branch of the Armed Forces.

(B) Rebate or other Consideration or Inducement not in Contract. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member when committed on a military installation by an insurer or insurance producer constitute unfair trade practices under section 375.936(9), RSMo:

1. Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or

2. Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

(2) Unfair Trade Practices Regardless of Location.

(A) Untrue, Deceptive or Misleading Representations Concerning Banking. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member’s pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member’s “MyPay” account or other similar Internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing

insurer or premium information necessary to complete any allotment form;

2. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

A. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. section 4301 et seq. and the regulations promulgated thereunder; and

B. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

3. Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member’s Leave and Earnings Statement or equivalent or successor form as “Savings” or “Checking” and where the service member has no formal banking relationship as defined in paragraph (2)(A)2.; or

4. Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship as defined in paragraph (2)(A)2.

(B) Rebate or other Consideration or Inducement not in Contract. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(9), RSMo:

1. Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

2. Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;

3. Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; or



4. Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(C) Untrue, Deceptive or Misleading Representations Concerning Source, Sponsorship, Approval or Affiliation. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, “Battalion Insurance Counselor,” “Unit Insurance Advisor,” “Servicemen’s Group Life Insurance Conversion Consultant” or “Veteran’s Benefits Counselor.” Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS); or

2. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(D) Untrue, Deceptive or Misleading Representations Concerning Premiums, Costs or Investment Returns. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

2. Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product “costs nothing” or is “free.”

(E) Untrue, Deceptive or Misleading Representations Concerning Servicemembers’ Group Life Insurance (SGLI) or Veterans’ Group Life Insurance (VGLI). The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;

2. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive; or

3. Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member’s separation from the United States Armed Forces.

(F) Omission of Material Disclosures. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

2. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

3. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

4. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the “Military Personnel Financial Services Protection Act,” Pub. L. No. 109-290, p.16; or

5. Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

A. An explanation of any free look period with instructions on how to cancel if a policy is issued; and

B. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of sections 375.1500 to 375.1527, RSMo shall be deemed sufficient to meet this requirement for a written disclosure.

(G) Omission of Facts Concerning Suitability. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

2. Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant’s SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant’s insurable needs for life insurance;

3. Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

A. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

B. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate



of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten (1-10) and for every fifth policy year thereafter ending at age one hundred (100), policy maturity or final expiration; and

C. Which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due;

4. Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance; or

5. Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

AUTHORITY: sections 374.045, 375.934, and 375.936, RSMo 2000 and section 375.144, RSMo Supp. 2007. Original rule filed Nov. 9, 2007, effective June 30, 2008.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995; 375.934, RSMo 1959, amended 1978, 1991; 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991; and 375.144, RSMo 2005.*

20 CSR 400-5.400 Replacement of Life Insurance and Annuities

PURPOSE: This rule regulates the activities of insurers, agents and brokers with respect to the replacement of existing life insurance and annuities and protects the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transaction.

(1) Purpose. The purpose of this rule is to—

(A) Regulate the activities of insurers and insurance producers with respect to the replacement of existing life insurance and annuities; and

(B) Protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by—

1. Assuring that purchasers receive information with which a decision can be made in his/her own best interest;

2. Reducing the opportunity for misrepresentation and incomplete disclosures; and

3. Establishing penalties for failure to comply with requirements of this rule.

(2) Definition of Replacement. Replacement means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing insurance producer or to the proposing insurer if there is no insurance producer, that by reason of that transaction, existing life insurance or annuity has been or is to be—

(A) Lapsed, forfeited, surrendered 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) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy.

(3) Other Definitions.

(A) Conservation means any attempt by the existing insurer or its insurance producer to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.

(B) Direct-response sales means any sale of life insurance or annuity where the insurer does not utilize an insurance producer in the sale or delivery of the policy.

(C) Existing insurer means the insurance company whose policy is or will be changed or terminated in a manner as described within the definition of replacement.

(D) Existing life insurance or annuity means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

(E) Policy summary or ledger statement as defined by section 376.704, RSMo.

(F) Registered contract means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in separate account or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commis-

sion.

(G) Replacing insurer means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(4) Exemptions. Unless otherwise specifically included, this rule shall not apply to transactions involving—

(A) Credit life insurance;

(B) Group life insurance or group annuities;

(C) An application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised;

(D) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(E) Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control; provided, however, insurance producers proposing replacement shall comply with the requirements of subsection (5)(A);

(F) Registered contracts shall be exempt from the requirements of paragraphs (7)(B)2. and 3. requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu of it; and

(G) Policies issued in connection with a pension, profit sharing and individual retirement account or other benefit plan qualifying for tax deductibility of premium.

(5) Duties of Insurance Producers.

(A) Each insurance producer who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application—

1. A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

2. A signed statement as to whether the insurance producer knows replacement is or may be involved in the transaction.

(B) Where a replacement is involved, the insurance producer shall—

1. Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in Exhibit A, included herein, or other substantially similar form approved by the director. The notice shall be signed by both the applicant and the insurance producer and left with the applicant;



2. Obtain with or as part of each application a list of all existing life insurance or annuity to be replaced, or both, and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed;

3. Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant; and

4. Submit to the replacing insurer with the application a copy of the replacement notice provided pursuant to paragraph (5)(B)1.

(C) Each insurance producer who uses written or printed communications in a conversation shall leave with the applicant the original or a copy of the materials used.

(6) Duties of All Insurers. Each shall—

(A) Inform its field representatives or other personnel responsible for compliance with this rule of the requirements of this rule; and

(B) Require with or as a part of each completed application for life insurance or annuity, a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity.

(7) Duties of Insurers That Use Insurance Producers. Each insurer that uses an insurance producer in a life insurance or annuity sale shall—

(A) With or as part of each completed application for life insurance or annuity, require a statement signed by the insurance producer as to whether s/he knows replacement is or may be involved in the transaction;

(B) Where a replacement is involved—

1. Require from the insurance producer with the application for life insurance or annuity—1) a list of all of the applicant's existing life insurance or annuity to be replaced and 2) a copy of the replacement notice provided the applicant pursuant to paragraph (5)(B)1. The existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed;

2. Send to each existing insurer a written communication advising of the replacement of proposed replacement and the identification information obtained pursuant to paragraph (7)(B)1. and a policy summary or ledger statement containing policy data on the proposed life insurance or annuity. Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary or ledger statement.

This written communication shall be made within five (5) working days of the date the application is received in the replacing insurer's home or regional office or the date the proposed policy or contract is issued, whichever is sooner; and

3. Each existing insurer or the insurer's insurance producer, that undertakes a conversation, within twenty (20) days from the date the written communication plus the materials required in paragraphs (7)(B)1. and 2. is received by the existing insurer, shall furnish the policyowner with a policy summary for the existing life insurance or a ledger statement containing policy data on the existing policy annuity, or both. All information in the policy summary or ledger statement relating to premiums, cash values, death benefits and dividends shall be computed from the current policy year of the existing life insurance. The policy summary shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions and may include any other information that is not in violation of any rule or statute. Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries;

(C) As the replacing insurer, maintain evidence of the "Notice Regarding Replacement," the policy summary, the contract summary and any ledger statements used and a replacement register, cross-indexed, by replacing insurance producer and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries, contract summaries or ledger statements used in any conversation. Evidence that all requirements were met shall be maintained for at least three (3) years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is earlier; and

(D) As the replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty (20) days commencing from the date of delivery of the policy.

(8) Duties of Insurers With Respect to Direct-Response Sales.

(A) If in the solicitation of a direct response sale, the insurer did not propose the replacement and a replacement is involved,

the insurer shall send to the applicant with the policy a replacement notice as described in Exhibit B, or other substantially similar form approved by the director.

(B) If the insurer proposed the replacement, it shall—

1. Provide to applicants or prospective applicants with or as a part of the application a replacement notice as described in Exhibit B, included herein, or other substantially similar form approved by the director;

2. Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured; and

3. Comply with the requirements of paragraph (7)(B)2., if the applicant furnishes the names of the existing insurers and the requirements of subsection (7)(C), except that it need not maintain a replacement register.

(9) Penalties.

(A) Any insurer, insurance producer, representative, officer or employee of that insurer failing to comply with the requirements of this rule shall be subject to those penalties as may be appropriate under the insurance laws.

(B) Patterns of action by policyowners who purchase replacing policies from the same insurance producer, after indicating on the application that replacement is not included, shall be deemed *prima facie* evidence of the insurance producer's knowledge that replacement was intended in connection with the sale of those policies and the patterns of action shall be deemed *prima facie* evidence of the insurance producer's intent to violate this rule.

(C) This regulation does not prohibit the use of additional material other than that which is required that is not in violation of the rule or any other statute or rule.

(10) Severability. If any section or portion of a section of this rule or the applicability of it to any person or circumstance, is held invalid by a court, the remainder of this rule or the applicability of that provision to other persons, shall not be affected.



Exhibit A
Replacement Notice
Replacing Your Life Insurance Policy or Annuity?

Are you thinking about buying a new policy and discontinuing or changing an existing policy? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing policy and the proposed policy.

Make sure you understand the facts. Ask the company or insurance producer that sold you your existing policy to provide you with a policy summary statement.

The reverse side contains a check list of some of the items you should consider in making your decision. TAKE TIME TO READ IT.

Do not let one insurance producer or insurer prevent you from obtaining information from another insurance producer or insurer which may be to your advantage.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

We are required to notify your existing company that you may be replacing their policy.

Applicant's Signature	Date	Insurance Producer's Signature	Date
Applicant's Name and Address (printed)	Insurance Producer's Name, Address, Telephone Number and License Number (printed)		

ORIGINAL TO APPLICANT
COPY TO REPLACING INSURER—COPY TO REPLACED INSURER

ITEMS TO CONSIDER

1. If the policy coverages are basically similar, premiums for a new policy may be higher because rates increase as your age increases.
2. Cash values and dividends, if any, may grow slower under a new policy initially because of the initial costs of issuing a policy.
3. Your present insurance company may be able to make a change on terms which may be more favorable than if you replace existing insurance with new insurance.
4. If you borrow against an existing policy to pay premiums on a new policy, death benefits payable under your existing policy will be reduced by the amount of any unpaid loan, including unpaid interest.
5. Current interest rates are not guaranteed. Guaranteed interest rates are usually considerably lower than current rates. What rates are guaranteed?
6. Are premiums guaranteed or subject to change—up or down?
7. Participating policies pay dividends that may materially reduce the cost of insurance over the life of the contract. Dividends, however, are not guaranteed.
8. **CAUTION**, you are urged not to take action to terminate, assign or alter your existing life insurance coverage until after you have been issued the new policy, examined it and have found it to be acceptable to you; and
REMEMBER, you have twenty (20) days following receipt to examine the contents of any individual life insurance policy or annuity. If you are not satisfied with it for **any** reason, you have the right to return it to the insurer at its home or branch office, or to the insurance producer through whom it was purchased, for a full refund of premium.



EXHIBIT B
(Name, address and telephone number of the insurance company)
**Important Notice Regarding Replacement
of Life Insurance**

You have indicated that you intend to replace an existing life insurance policy or policies in connection with the purchase of our life insurance policy. As a result, we are required to send you this notice. Please read it carefully.

Whether it is to your advantage to replace your existing insurance coverage, only you can decide. It is in your best interest, however, to have adequate information before a decision to replace your present coverage becomes final so that you may understand the essential features of the proposed policy and your existing insurance coverage.

You may want to contact your existing life insurance company or its insurance producer for additional information and advice or discuss your purchase with other advisors. The information you receive should be of value to you in reaching a final decision.

If either the proposed policy or the existing insurance you intend to replace is a participating policy, you should be aware that dividends may materially reduce the cost of insurance and are an important factor to consider. Dividends, however, are not guaranteed.

You should recognize that a policy which has been in existence for a period of time may have certain advantages to you over a new policy. If the policy coverages are basically similar, the premiums for a new policy may be higher because rates increase as your age increases. Under your existing policy, the period of time during which the issuing company could [contest the policy because of a material misrepresentation or omission concerning the medical information requested in your application, or]* deny coverage for death caused by suicide, may have expired or may expire earlier than it will under the proposed policy. Your existing policy may have options which are not available under the policy being proposed to you or may not come into effect under the proposed policy until a later time during your life. Also, your proposed policy's cash values and dividends, if any, may grow slower initially because the company will incur the cost of issuing your new policy. On the other hand, the proposed policy may offer advantages which are more important to you.

If you are considering borrowing against your existing policy to pay the premiums on the proposed policy, you should understand that in the event of your death, the amount of unpaid loan, including unpaid interest, will be deducted from the benefits of your existing policy thereby reducing your total insurance coverage.

* * * * *

(Additional paragraph if a twenty (20)-day money-back guarantee is provided by the insurer.)

After we have issued your policy, you will have twenty (20) days from the date the new policy is received by you to notify us you are cancelling the policy issued on your application and you will receive back all payments you made to us.

* * * * *

You are urged not to take action to terminate or alter your existing life insurance coverage until you have been issued the new policy, examined it and found it acceptable to you.

* * * * *

*Use bracketed language only when the application asks health questions.



AUTHORITY: sections 374.045 and 375.936, RSMo 2000. This rule was previously filed as 4 CSR 190-13.060. Original rule filed Jan. 5, 1970, effective Jan. 15, 1970. Amended: Filed June 21, 1970, effective July 1, 1970. Amended: Filed Feb. 18, 1972, effective Feb. 28, 1972. Amended: Filed Aug. 5, 1974, effective Aug. 15, 1974. Amended: Filed Dec. 23, 1975, effective Jan. 2, 1976. Rescinded and readopted: Filed March 15, 1979, effective Sept. 14, 1979. Rescinded: Filed July 3, 1985, effective Oct. 25, 1985. Rescinded and readopted: Filed Aug. 12, 1983, effective Dec. 12, 1983. Amended: Filed July 12, 2002, effective Feb. 28, 2003.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995; 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991.*

Op. Atty. Gen. No. 23, Fink (5-5-71). *Subsection 3 of the Division of Insurance's regulation 3.II (now 4 CSR 190-13.060(1)), which defines "replacement of life insurance" is in compliance with section 374.045(1), (3), RSMo (1969) because such regulation is reasonably related to section 375.936(5), RSMo (1969).*

20 CSR 400-5.410 Disclosure of Material Facts in Annuity Sales

PURPOSE: This rule is to provide standards for the disclosure of certain information about annuity contracts to protect consumers and foster consumer education. The rule specifies material information which must be disclosed and the method for disclosing it in connection with the offer and sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of an annuity contract. This rule is based upon the Annuity Disclosure Model Regulation, adopted by the National Association of Insurance Commissioners in 1998. The rule is a minimum standard, but is not a substitute for complete disclosure of material facts prior to sale as required by law.

(1) Applicability. This regulation applies to all group and individual annuity contracts and certificates except:

(A) Annuities that are registered under federal securities law with the United States Securities and Exchange Commission;

(B) Immediate and deferred annuities that contain no non-guaranteed 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 regulation 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; and

(D) Structured settlement annuities.

(2) Definitions. Unless inconsistent with definitions provided by statute, the following terms and phrases shall mean:

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

(B) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where 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.

(C) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity."

(D) "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.

(E) "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.

(F) "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.

(3) 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 (3)(B) and the Buyer's Guide contained in section (5).

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 after 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 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 fifteen (15) 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 regulation.

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

1. The generic name of the contract, the company product name, if different, and 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 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 with an explanation of how they apply; and

5. Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(C) Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

(4) 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.

(5) Buyer's Guide to Fixed Deferred Annuities.

(A) The language of the Fixed Deferred Annuity Buyer's Guide is limited to that contained in the form set forth as Exhibit A, or to language approved by the director. Companies may purchase personalized brochures from the National Association of Insurance Commissioners (NAIC) or may request permission to reproduce the Fixed Deferred Annuity Buyer's Guide, which is included herein, in their own type style and format. The face page of the Fixed Deferred Annuity Buyer's Guide shall read as stated in Exhibit A.



Exhibit A

Fixed Deferred Annuity Buyer's Guide

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

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It is important that you understand the differences among various annuities so you can choose the kind that best fits your needs. This guide focuses on *fixed deferred* annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your agent or the company. Make sure you're satisfied with the answers before you buy.

WHAT IS AN ANNUITY?

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.

An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.

Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefits of annuity contracts.

A *deferred* annuity has two parts or *periods*. During the *accumulation period*, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity. During the second period, called the *payout period*, the company pays income to you or to someone you choose.

WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're



considering and the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

This Buyer's Guide will focus on individual fixed deferred annuities.

Single Premium or Multiple Premium

You pay the insurance company only one payment for a *single premium* annuity. You make a series of payments for a *multiple premium* annuity. There are two kinds of multiple premium annuities. One kind is a *flexible premium* contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a *scheduled premium* annuity, the contract spells out your payments and how often you'll make them.

Immediate or Deferred

With an *immediate* annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a *deferred* annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

Fixed or Variable

- Fixed

During the accumulation period of a *fixed deferred* annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the payout period, the amount of each income payment to you is generally set when the payments start and will not change.

- Variable

During the accumulation period of a *variable* annuity, the insurance company puts your premiums (less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account).



HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time. **Usually, what these rates will be is entirely up to the insurance company.**

Current Interest Rate

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not change for some time period.

- The *initial rate* is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.
- The *renewal rate* is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.

Minimum Guaranteed Rate

The *minimum guaranteed interest rate* is the lowest rate your annuity will earn. This rate is stated in the contract.

Multiple Interest Rates

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods.

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. **You get only one of the accumulated values depending on which benefit you choose.**

WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

Surrender or Withdrawal Charges

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a *withdrawal* charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a *surrender* charge. In either case, the company may figure the charge as a percentage of the



value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a *window*, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a *bail-out* option.

In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a *rolling* surrender or withdrawal charge.

Some annuity contracts have a *market value adjustment* feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with a MVA feature may credit a higher rate than an annuity without that feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.

Free Withdrawal

Your annuity may have a limited *free withdrawal* feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.

Contract Fee

A contract fee is a flat dollar amount charged either once or annually.

Transaction Fee

A transaction fee is a charge per premium payment or other transaction.

Percentage of Premium Charge

A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.



Premium Tax

Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?

Annuity Income Payments

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's *benefit rate* in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.

There is a table of guaranteed benefit rates in each annuity contract. Most companies have *current* benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company generally uses the benefit rate in effect at that time to figure the amount of your income payment.

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you.

- **Life Only** - The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependents have enough income of their own.
- **Life Annuity with Period Certain** - The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This *period certain* is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity. Because the "period certain" is an added benefit, each income payment will be smaller than in a life-only option.
- **Joint and Survivor** - The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be



able to choose to have payments continue for a set length of time. Because the *survivor* feature is an added benefit, each income payment is smaller than in a life-only option.

Death Benefit

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?

While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.

WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.

Part of the payments you receive from an annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you withdraw the accumulation before age 59 1/2. The Internal Revenue Code also has rules about distributions after the death of a contract holder.

Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.



You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.

WHAT IS A "FREE LOOK" PROVISION?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a *free look* or *right to return* period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.

HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- How much retirement income will I need in addition to what I will get from Social Security and my pension?
- Will I need that additional income only for myself or for myself and someone else?
- How long can I leave my money in the annuity?
- When will I need income payments?
- Does the annuity let me get money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?

WHAT QUESTIONS SHOULD I ASK MY AGENT OR THE COMPANY?

- Is this a single premium or multiple premium contract?
- Is this an equity-indexed annuity?
- What is the initial interest rate and how long is it guaranteed?



- Does the initial rate include a bonus rate and how much is the bonus?
- What is the guaranteed minimum interest rate?
- What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?
- Are there withdrawal or surrender charges or penalties if I want to end my contract early and take out all of my money? How much are they?
- Can I get a partial withdrawal without paying surrender or other charges or losing interest?
- Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?
- Is there a market value adjustment (MVA) provision in my annuity?
- What other charges, if any, may be deducted from my premium or contract value?
- If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change?
- Is there a death benefit? How is it set? Can it change?
- What income payment options can I choose? Once I choose a payment option, can I change it?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule of charges that could mean new expenses you must pay directly or indirectly.

You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in. Be sure you understand the effect of all charges.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.



Remember that the quality of service that you can expect from the company and the agent is a very important factor in your decision.

When you receive your annuity contract, **READ IT CAREFULLY!!** Ask the agent and company for an explanation of anything you don't understand. Do this *before* any free look period ends.

Compare information for similar contracts from several companies. Comparing products may help you make a better decision.

If you have a specific question or can't get answers you need from the agent or company, contact your state insurance department.



(B. Appendix for Equity-indexed Annuities. This paragraph sets forth supplementary information to be used in the solicitation or sale of equity-indexed annuities):

EQUITY-INDEXED ANNUITIES

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

WHAT ARE EQUITY-INDEXED ANNUITIES?

An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500)¹, which is an equity index. The value of any index varies from day to day and is not predictable.

When you buy an equity-indexed annuity you own an insurance contract. You are not buying shares of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest, if any, is calculated and credited. How much additional interest you get and when you get it depends on the features of your particular annuity.

Your equity-indexed annuity, like other fixed annuities, also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death

¹ S&P 500 is a registered trademark of the McGraw-Hill Companies, Inc., used with permission.



benefits. The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases.

WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula.

Indexing Method

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

Term

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

Participation Rate

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% ($9\% \times 70\% = 6.3\%$). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

Cap Rate or Cap

Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.

Floor on Equity Index-Linked Interest



The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases, your fixed annuity will have a minimum guaranteed value.

Averaging

In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.

Interest Compounding

Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.

Margin/Spread/Administrative Fee

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This percentage, sometimes referred to as the "margin," "spread," or "administrative fee," might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% ($10\% - 2.25\% = 7.75\%$). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.

Vesting

Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

HOW DO THE COMMON INDEXING METHODS DIFFER?

Annual Reset

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.



High-Water Mark

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

Low-Water Mark

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

Point-to-Point

The index-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.

WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

Generally, equity-indexed annuities offer *preset* combinations of features. You may have to make trade-offs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

Features

Trade-Offs

Annual Reset

Since the interest earned is “locked in” annually and the index value is “reset” at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.

Your annuity’s participation rate may change each year and generally will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year.



High-Water Mark

Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle of the term, then drops off at the end of the term.

Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

Low-Water Mark

Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end of the term.

Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

Point-to-Point

Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other designs.

Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end of the term.

WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?

Cap on Interest Earned

While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.

Averaging



Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of index-linked interest you earn when the index rises either near the start or at the end of the term.

Participation Rate

The participation rate may vary greatly from one annuity to another and from time to time within a particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.

Interest Compounding

It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a higher participation rate.

WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?

In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

ARE DIVIDENDS INCLUDED IN THE INDEX?

Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.

HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?



Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?

Or, am I somewhere in between these two extremes and willing to take some risks?

HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.

QUESTIONS YOU SHOULD ASK YOUR AGENT OR THE COMPANY

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities.

- How long is the term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?
- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?



- Can I get a partial withdrawal without paying charges or losing interest? Does my contract have vesting? If so, what is the rate of vesting?

Final Points to Consider

Remember to read your annuity contract carefully when you receive it. Ask your agent or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the agent or company, contact your state insurance department.



AUTHORITY: sections 374.040, 374.045, 375.013, 375.936(4) and 375.936(6), RSMo 2000 and 375.144, RSMo Supp. 2005. Original rule filed July 14, 2006, effective Jan. 30, 2007.*

**Original authority: 374.040, RSMo 1939, amended 1967; 374.045, RSMo 1967, amended 1993, 1995; 375.013, RSMo 1993, amended 1995; 375.144, RSMo 2005; and 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991.*

20 CSR 400-5.500 Life Insurance Sold to College Students

PURPOSE: This rule explains the practice which must be followed by insurance producers who sell or present plans of life insurance to college students. This rule was adopted pursuant to the provisions of section 374.045, RSMo and implements section 375.936, RSMo.

(1) The rule and procedures following will apply to all insurers, and insurance producers who sell or present plans of college life insurance to undergraduates and graduate students throughout Missouri:

(A) If the applicant is a minor and executes a promissory note for the payment of any part of the premiums, the note must be cosigned by the applicant's parent, legal guardian or adult spouse;

(B) The application form for the coverages must recite the terms of any promissory note executed in connection with the coverages, showing the amount of the note, the balance due, the payment provisions and any credit to reflect the down payment, the down payment being required by this rule;

(C) If a note is taken to finance less than the full first year premium, the balance must be paid by the applicant at the time the application is taken;

(D) Down payments shall be made in cash or by check and may not be paid or advanced by the producing insurance producer;

(E) A copy of the note must be attached to the policy at the time of delivery. Delivery must be in person by a company representative. In the event that personal delivery is for good reason impractical, delivery may be made by use of United States certified mail, return receipt requested and delivery to addressee only;

(F) Upon delivery, a policy receipt or acceptance form must be executed which recites that—

1. The policy has been issued as represented; and

2. The insured acknowledges and understands the provisions and obligations of the

financial indebtedness that s/he has incurred;

(G) The receipt or acceptance form mentioned in subsection (1)(F) shall be registered by a number corresponding to the policy number in the home office; the forms shall not be distributed to field representatives or insurance producers but are to be furnished from and by the home office when sending the policy to the producing insurance producer;

(H) If the promissory note of the insured is sold or discounted to a third party by either the company or the insurance producer, the transferor must inform the insured of the sale or transfer within thirty (30) days of same. The notice may invite questions as to whether the terms and conditions for payment are modified, but if applicable, must explain that the policy is security for payment for the note;

(I) Whenever insurance of this type replaces existing life insurance, either wholly or partially, 20 CSR 400-5.400 must be strictly observed;

(J) Insurance producers or field representatives of the company who are licensed by this state to represent the company as licensed life insurance producers may not represent, refer to or hold themselves out to the public under any special title or as representatives of any special policy or company unless they identify themselves as licensed insurance producers. No person other than a licensed insurance producer shall participate in the transaction, solicitation or effectuation of life insurance with respect to college students in this state;

(K) Any insured may cancel his/her obligations under the policy of insurance or the promissory note connected with the policy of insurance within fourteen (14) days from the delivery of the policy; a provision advising the insured of same shall be placed in the notices now required by subsection (1)(F) of this rule. Upon the cancellation, the insured shall be entitled to a full refund of premium paid; and

(L) Notwithstanding the provisions of subsection (1)(K) of this rule, if the Department of Insurance determines, after a prompt and fair investigation, that the company or its insurance producers have violated this rule or materially misrepresented the contract, the policy issued will be cancelled, the applicant released from all obligations and a total refund made of partial or down payments.

(2) The following practices are deemed deceptive and misleading and, if proven after the hearing required by section 375.940, RSMo, shall subject the insurer to the penal-

ties provided by law: Violations by insurance producers listed in this rule shall subject them to the penalties now contained in section 375.141, RSMo.

(A) Telling or informing an applicant, either directly or indirectly, that s/he will receive the first or other year of insurance free of charge;

(B) Representing that the cash or surrender value of the policy actually sold is greater than it is; or

(C) Making any other untrue or misleading representation about the coverage or the terms and condition for payment for the coverage.

AUTHORITY: sections 374.045 and 375.936, RSMo 2000. This rule was previously filed as 4 CSR 190-13.070. Original rule filed Jan. 2, 1970, effective Jan. 15, 1970. Amended: Filed June 12, 1970, effective July 1, 1970. Amended: Filed Aug. 5, 1974, effective Aug. 15, 1974. Amended: Filed July 12, 2002, effective Jan. 30, 2003.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995 and 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991.*

20 CSR 400-5.600 Missouri Life and Health Insurance Guaranty Association

PURPOSE: This rule sets forth the forms required by section 376.756, RSMo for use in connection with the sale of policies or contracts which either are or are not covered by the Missouri Life and Health Insurance Guaranty Fund.

(1) Effective May 31, 1989 no insurer may deliver a policy or contract described in section 376.717.2, RSMo, to a policy or contract holder unless a copy of the notice set out in Appendix One is given to the policy or contract holder before or at the time of delivery.

If the policy or contract is excluded under section 376.717.3, RSMo, the notice set out in Appendix One, which is included herein, does not need to be delivered to the policy or contract holder.

(2) No insurer or insurance producer may deliver a contract or policy described in section 376.717.2, RSMo and excluded under section 376.717.3, RSMo from coverage under the provisions of sections 376.715—376.758, RSMo unless the insurer or insurance producer, prior to or at the time of delivery, gives the policy or contract holder a copy of the notice set out in Appendix Two, included herein.



**APPENDIX ONE
NOTICE OF PROTECTION PROVIDED BY
MISSOURI LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

This notice provides a *brief summary* of the Missouri Life and Health Insurance Guaranty Association (“the Association”) and the protection it provides for policyholders. This safety net was created under Missouri law, which determines who and what is covered and the amounts of coverage.

The Association was established to provide protection in the unlikely event that your life, annuity, or health insurance company becomes financially unable to meet its obligations and is taken over by its insurance department. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with Missouri law, with funding from assessments paid by other insurance companies.

The basic protections provided by the Association are as follows:

- Life Insurance
 - \$300,000 in death benefits
 - \$100,000 in cash surrender or withdrawal values
- Health Insurance
 - \$500,000 in hospital, medical, and surgical insurance benefits
 - \$300,000 in disability insurance benefits
 - \$300,000 in long-term care insurance benefits
 - \$100,000 in other types of health insurance benefits
- Annuities
 - \$250,000 in withdrawal and cash values

The maximum amount of protection for each individual, regardless of the number of policies or contracts, is as follows:

- \$300,000 in aggregate for all types of coverage listed above, with the exception of basic hospital, medical, and surgical insurance or major medical insurance
- \$500,000 in aggregate for basic hospital, medical, and surgical insurance or major medical insurance
- \$5,000,000 to one policy owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons

Note: Certain policies and contracts may not be covered or fully covered. For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under Missouri law.

To learn more about the above protections, as well as protections relating to group contracts or retirement plans, please visit the Association’s website at www.mo-iga.org, or contact:

Missouri Life and Health
Insurance Guaranty Association
994 Diamond Ridge, Suite 102
Jefferson City, Missouri 65109
Ph.: 573-634-8455
Fax: 573-634-8488

Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Ph.: 573-522-6115

Insurance companies and agents are not allowed by Missouri law to use the existence of the Association or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on Association coverage. If there is any inconsistency between this notice and Missouri law, then Missouri law will control.

**APPENDIX TWO
NOTICE**

This policy or contract is not covered by the Missouri Life and Health Insurance Guaranty Association. If the company providing this policy or contract is unable to meet its obligation by reason of insolvency or financial impairment, the fund(s) of the Missouri Life and Health Insurance Guaranty Association will not be available to protect the policy or contract holder or his/her beneficiaries, payees, or assignees.



AUTHORITY: section 374.045.1(2), RSMo Supp. 2013, and section 376.756, RSMo 2000. This rule was previously filed as 4 CSR 190-13.290. Original rule filed Sept. 6, 1988, effective April 1, 1989. Amended: Filed Dec. 1, 1989, effective May 1, 1990. Emergency amendment filed April 30, 1990, effective May 10, 1990, expired Aug. 7, 1990. Amended: Filed April 30, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 4, 1992, effective May 6, 1993. Amended: Filed July 12, 2002, effective Jan. 30, 2003. Amended: Filed July 29, 2005, effective Feb. 28, 2006. Amended: Filed Oct. 10, 2013, effective April 30, 2014.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008 and 376.756, RSMo 1988.*

20 CSR 400-5.700 Accident and Sickness Insurance Advertising

PURPOSE: This rule effectuates or aids in the interpretation of and carries out the provisions of sections 354.460, 375.936, 376.405, 376.777, 376.850—376.890 and 379.922, RSMo.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Responsibility of Insurer.

(A) These rules shall apply to any accident and sickness insurance advertisement, as that term is defined in this rule, intended for presentation, distribution, dissemination or other advertising use in this state, when this use is made either directly or indirectly by or on behalf of that insurer.

(B) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. The insurer whose policies are so advertised shall be deemed responsible for all these advertisements, regardless of by whom written, created, presented or distributed.

(C) Each health service corporation licensed under Chapter 354, RSMo shall be considered within the full scope of this rule

and consider itself an insurer issuing policies when doing any advertising as defined in this rule.

(2) Definitions.

(A) An advertisement for the purpose of these rules shall include:

1. Printed or published material, audio-visual material and descriptive literature used by or on behalf of an insurer in direct mail, newspapers, magazines, radio scripts, television scripts, billboards and similar displays;

2. Descriptive literature and sales aids of all kinds issued by an insurer, insurance producer for presentation to members of the insurance buying public, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, form letters and lead-generating devices of all kinds as defined in this rule; and

3. Prepared sales talks, presentations and material for use by insurance producers whether prepared by the insurer or the insurance producer.

(B) Exception for the purpose of these rules shall mean any provision in a policy where coverage for a specified hazard is entirely eliminated; it is a statement of risk not assumed under the policy.

(C) Institutional advertisement for the purpose of these rules shall mean an advertisement having as its sole purpose and presentation the promotion of the reader's interest in the concept of accident and sickness insurance or the promotion of the insurer as a name in the field of accident and sickness insurance.

(D) Insurer for the purpose of these rules shall include any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society, health maintenance organization, health service corporation, prepaid dental plan and any other legal entity which is regulated as an insurer in this state and is engaged in the advertisement of itself or a policy as policy is defined in this rule.

(E) Invitation to contract for the purpose of these rules shall mean any advertisement which is neither clearly an invitation to inquire nor clearly an institutional advertisement.

(F) Invitation to inquire for the purpose of these rules shall mean an advertisement having as its objective the creation of a desire to inquire further about the product and which is limited to a brief description of the loss for which the benefit is payable and which may contain the dollar amount of benefit payable or the period of time during which the benefit is payable, or both. The advertisement shall not refer to cost. An advertisement

which specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall conspicuously contain a provision substantially as follows: "For costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your insurance producer or write the company."

(G) Lead-generating device, for the purpose of these rules, shall mean any communication directed to the public which, regardless of form, content or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of a policy.

(H) Limitation for the purpose of these rules shall mean any provision which restricts coverage under the policy other than an exception or a reduction.

(I) Policy for the purpose of these rules shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or sickness benefits or medical, surgical or hospital expense benefits, whether, on an indemnity, reimbursement, health service or prepaid basis, except when issued in connection with another type of insurance other than life and except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts.

(J) Reduction for the purpose of these rules shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than would be otherwise payable had the reductions not been used.

(3) Method of Disclosure of Required Information. All information required to be disclosed by these rules shall be set out conspicuously and in close conjunction with the statements to which this information relates or under appropriate captions of such prominence that it shall not be minimized, obscured or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

(4) Form and Content of Advertisements.

(A) The format and content of an advertisement of an accident or sickness insurance policy shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead



or deceive shall be determined by the director of insurance from the basic overall impressions that the advertisement may create reasonably upon those persons of average education and intelligence for that segment of the public to which it appears on its face to be directed.

(B) Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

(5) Advertisements of Benefits Payable, Losses Covered or Premiums Payable.

(A) Deceptive words, phrases or illustrations are prohibited.

1. No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission of this information or use of these words, phrases, statements, references or illustrations has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied or does not remedy misleading statements or omissions of pertinent fact. No advertisements may employ devices which create undue fear or anxiety in the minds of its readers judged by the standards in section (4).

2. Policies advertised as Medicare supplements or as providing additional benefits not provided by Medicare or similar government programs must not create any illusion of greater coverage or undue anxiety in the minds of those purchasing the coverage than is actually provided. Any advertisement is unacceptable which—

A. Exaggerates the gaps in Medicare coverage;

B. Promotes fear of dependence upon relatives or charity;

C. Implies that long periods of sickness or hospital stays are common among the elderly;

D. Does not explain the manner in which any advertised policy is supplemental to Medicare coverage or fails to disclose the exact benefits it is designed to supplement;

E. Describes the inpatient hospital coverage of Medicare as “hospital Medicare” or “Medicare Part A” when the policy does not supplement the nonhospital or the psychiatric hospital benefits of Medicare Part A

(phrases to the effect of the “inhospitable portion of Medicare Part A” are acceptable);

F. Fails to clearly describe the operation of the part(s) of Medicare which the policy is designed to supplement; and

G. Describes those Medicare benefits not supplemented by the policy in a way as to minimize their importance relative to the Medicare benefits which are supplemented.

3. No advertisement shall contain or use words or phrases such as, “all”, “full”, “complete”, “comprehensive”, “unlimited”, “up to”, “as high as”, “this policy will help pay your hospital and surgical bills”, “this policy will help fill some of the gaps that Medicare and your present insurance leave out”, “this policy will help to replace your income” (when used to express loss of time benefits) or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy.

4. An advertisement shall not contain descriptions of a policy limitation, exception or reduction worded in a positive manner to imply that it is a benefit, such as describing a waiting period as a “benefit builder” or stating “even preexisting conditions are covered after two years.” Words and phrases used in an advertisement to describe the policy limitations, exceptions and reductions fairly and accurately shall describe the negative features of these limitations, exceptions and reductions of the policy offered.

5. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as “tax free,” “extra cash,” “extra income,” “extra pay” or substantially similar words or phrases in a manner which has the capacity, tendency or effect of misleading the public into believing that the policy advertised, in some way, will enable them to make a profit from being hospitalized.

6. No advertisement of a hospital or other similar facility confinement benefit shall advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily *pro rata* basis relating to the number of days of confinement unless the statements of these monthly or weekly benefit amounts are followed immediately by equally prominent statements of the benefit payable on a daily basis. For example, either of the following statements is acceptable: “\$1000 a month at (\$33.33 per day)” or “\$33.33 per day (\$1000 per month).” When the policy contains a limit on the number of days of coverage provided, this limit must appear in the advertisement.

7. No advertisement of a policy covering only one (1) disease or a list of specified diseases shall imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

8. An advertisement for a policy providing benefits for specified illnesses only, such as cancer or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be substantially as follows: “THIS IS A LIMITED POLICY,” “THIS IS A CANCER POLICY ONLY,” “THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY.”

9. An advertisement which is also an invitation to join an association, trust or discretionary group must solicit insurance coverage on a separate and distinct application which requires separate signatures for each application; provided, however, that a separate and distinct application which requires signatures for each application need not be made where the advertisement is an invitation to join a discretionary group approved under section 376.421.2., RSMo, which has as its sole purpose the provision of group health insurance benefits. The insurance program must be presented so as not to mislead or deceive the prospective members that they are purchasing insurance as well as applying for membership if that is the case.

(B) Exceptions, Reductions and Limitations.

1. When an advertisement which is an invitation to contract refers to either a dollar amount or a period of time for which any benefit is payable or the cost of the policy or specified policy benefit or the loss for which the benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.

2. When a policy contains a waiting, elimination, probationary or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for this loss, an advertisement as stated shall disclose the existence of these periods.

3. An advertisement shall not use the words “only”, “just”, “merely”, “minimum” or similar words or phrases to imply a minimal applicability of any exceptions and reductions such as “This policy is subject only to the following minimum exceptions and reductions.”



(C) Preexisting Conditions.

1. An advertisement which is subject to the requirements of subsection (5)(B), in negative terms, shall disclose the extent to which any loss is not covered if the cause of the loss manifested itself prior to the effective date of the policy. The term “preexisting condition” or any similar phrase without an appropriate definition or description shall not be used.

2. When a policy does not cover losses resulting from preexisting conditions, no advertisement of the policy shall state or imply that the applicant’s physical condition or medical history will not affect the issuance of a policy or payment of a claim. If an insurer requires a medical examination for a specified policy, the advertisement if it is an invitation to contract must disclose that a medical examination is required.

3. When an advertisement contains an application form to be completed by the applicant and returned by mail for a direct response insurance product, the application form shall contain a question or statement which reflects the preexisting condition provisions of the policy which immediately precedes the blank space for the applicant’s signature. For example, this application form shall contain substantially the following question or statement: “Do you understand that this policy will not pay benefits during the first year(s) after the issue date for a disease or physical condition which you now have or have had in the past? YES” or substantially the following statement: “I understand the policy applied for will not pay benefits for any loss incurred during the first _____ year(s) after the issue date on account of disease or physical condition which I now have or have had in the past.”

(6) Necessity for Disclosing Policy Provisions Relating to Renewability, Cancellability and Termination. When an advertisement which is an invitation to contract refers to either a dollar amount or a period of time for which any benefit is payable or the cost of the policy or a specific policy benefit or the loss for which the benefit is payable, it shall disclose the provisions relating to renewability, cancellability, termination and any modification of benefits, losses covered or premiums in a manner which shall not minimize or render obscure the qualifying conditions.

(7) Testimonials or Endorsements by Third Parties.

(A) Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using a testimonial, makes as its

own all of the statements contained in the testimonial and the advertisement, including this statement, is subject to all the provisions of these rules.

(B) If the person making a testimonial, an endorsement or an appraisal has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise, this fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, this fact shall be disclosed in the advertisement by language substantially as follows: “Paid Endorsement.” The payment of substantial amounts, directly or indirectly, for “travel and entertainment” for filming or recording of television or radio advertisements requires disclosure of such compensation. This rule does not apply when payment is union scale.

(C) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless this is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person(s) who owns or controls the insurer, this fact shall be disclosed in the advertisement.

(D) When a testimonial refers to benefits received under a policy, the specific claim data, including claim number, date of loss and other pertinent information, shall be retained and made available by the insurer for inspection for a period of four (4) years or until the next regular report of examination of the insurer, whichever is the longer period of time.

(8) Use of Statistics.

(A) An advertisement relating to any insurer or policy shall not use irrelevant facts or statistics and shall accurately reflect all of the relevant facts. This advertisement shall not imply that the statistics are derived from the policy advertised unless this is the fact and when applicable to other policies or plans shall specifically so state.

(B) An advertisement shall not represent or imply that claim settlements by the insurer are “liberal” or “generous” or use words of similar import or that claim settlements are or will be beyond the actual terms of the contract. An unusual amount paid for a unique claim for the policy advertised is misleading and shall not be used.

(C) The specific source of any statistics used in an advertisement shall be clearly identified in the advertisement.

(9) Identification of Plan or Number of Policies.

(A) When a choice of the amount of benefits is referred to, an advertisement which is an invitation to contract shall disclose that the—

1. Amount of benefits provided depends upon the plan selected; and

2. Premium will vary with the plan and benefits selected.

(B) When an advertisement which is an invitation to contract refers to various benefits which may be contained in two (2) or more policies, other than group master policies, the advertisement shall disclose that these benefits are provided only through a combination of those policies.

(10) Disparaging Comparisons and Statements. An advertisement shall not, directly or indirectly, make unfair or incomplete comparisons of policies or benefits or comparisons of noncomparable policies of other insurers and shall not disparage competitors, their policies, services or business methods. It shall not disparage or unfairly minimize competing methods of marketing insurance.

(11) Jurisdictional Licensing and Status of Insurer.

(A) An advertisement which is seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

(B) An advertisement shall not create the impression directly or indirectly that the insurer, its financial condition or status or the payment of its claims or merits, desirability or advisability of its policy forms or kinds of plans of insurance are approved, endorsed or accredited by any division or agency of this state or the United States government.

(12) Identity of Insurer.

(A) The name of the actual insurer shall be stated in all of its advertisements. The form number(s) of the policy advertised shall be stated in an advertisement which is an invitation to contract. An advertisement shall not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive as to the true identity of the insurer.

(B) No advertisement shall use any combination of words, symbols or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols



or physical materials used by agencies of the federal government or of this state or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, state or federal government.

(C) No advertisement in the form of envelopes or stationery of any kind may use any name, service mark, slogan or symbol or any device in a manner that implies that the insurer or the policy advertised, or that any insurance producer who may call upon the consumer in response to the advertisement is connected with a governmental agency, such as the Social Security Administration.

(D) An insurance producer who makes contact with a consumer, as result of acquiring that consumer's name from a lead-generating device must disclose this fact in the initial contact with the consumer.

(13) Group or Quasi-Group Implications. An advertisement of particular policy shall not state or imply that prospective insureds become group or quasi-group members covered under a group policy and as such enjoy special rates and underwriting privileges, unless that is the fact.

(14) Introductory, Initial or Special Offers.

(A) Advertising.

1. An advertisement of an individual policy shall not directly or by implication represent that a contract or combination of contracts is an introductory, initial or special offer or that applicants will receive substantial advantages not available at a later date or that the offer is available only to a specified group of individuals, unless that is the fact. An advertisement shall not contain phrases describing an enrollment period as "special", "limited" or similar words or phrases when the insurer uses these enrollment periods as the usual method of advertising accident and sickness insurance.

2. An enrollment period during which a particular insurance product may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than three (3) months between the close of the immediately preceding enrollment period for substantially the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application which shall not be less than ten (10) days and not more than forty (40) days from the date that the enrollment period is advertised for the first time. This rule applies to all advertising media—that is, mail, newspapers, radio, television, maga-

zines and periodicals—by any one (1) insurer. It is inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket or franchise insurance. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control.

3. This rule prohibits any statement of implication to the effect that only a specific number of policies will be sold or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy, unless this is the fact.

4. The phrase "a particular insurance product" in paragraph (14)(A)2. means an insurance policy which provides substantially different benefits than those contained in any other policy, different terms of renewability; an increase or decrease in the dollar amounts of benefits; an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy shall not be sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(B) An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the initial reduced premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium and both the initial reduced premium and the renewal premium must be stated in juxtaposition in each portion of the advertisement where the initial reduced premium appears.

(C) Special award, such as a "safe drivers' award" shall not be used in connection with advertisements of accident or accident and sickness insurance.

(15) Statements About an Insurer. An advertisement shall not contain statements which are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly indicates the purpose of the recommendations and the limitations of the scope and extent of the recommendation.

(16) Enforcement Procedures.

(A) Advertising File. Each insurer shall maintain at its home or principal office and at its main office in this state, if any, a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in or into this state, with a notation attached to each advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. This file shall be subject to regular inspection by this department. All these advertisements shall be maintained in this file for a period of four (4) years.

(B) Preapproval of Advertising Required on Noncompliance. Any person violating any provision of this rule shall be subject to the penalties prescribed by law. The director may also require the insurer to file all its advertising intended for use in the state no later than twenty (20) days before the use, the filings to be examined and approved by the accident and health section of the Missouri Department of Insurance before use in this state. On these disapproved filings, the insurer may request a hearing, as under section 376.777.7., RSMo, Approval of Policies.

(17) Guidelines Adopted. The National Association of Insurance Commissioners' Interpretive Guidelines predating this rule are declared to be the official interpretation of this rule except where inconsistent with this rule.

(18) Severability Provision. If any section or portion of a section of these rules or the applicability of them to any person or circumstance is held invalid by a court, the remainder of the rules or the applicability of that provision to other persons or circumstances, shall not be affected by it.

AUTHORITY: sections 354.120, 374.045, 375.936, 376.405 and 376.777, RSMo 2000. This rule was previously filed as 4 CSR 190-14.040. This version of rule filed July 27, 1964, effective Aug. 6, 1964. Amended: Filed Dec. 5, 1969, effective Dec. 15, 1969. Amended: Filed Dec. 20, 1974, effective Dec. 30, 1974. Amended: Filed March 16, 1988, effective July 1, 1988. Amended: Filed July 12, 2002, effective Jan. 30, 2003.*

**Original authority: 354.120, RSMo 1973, amended 1983, 1993; 374.045, RSMo 1967, 1995; 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991; and 376.405, RSMo 1959, amended 1984; and 376.777, RSMo 1959, amended 1984.*