

# Arkansas Insurance Department

**Mike Huckabee**  
Governor



**Julie Benafield Bowman**  
Commissioner

DIRECTIVE NO.: 2-2006

TO: ALL LIFE INSURANCE AND ANNUITY COMPANIES, APPOINTED LIFE/ANNUITY PRODUCERS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: UNLAWFUL SALES PRACTICES PERTAINING TO ANNUITIES FOR SENIORS

DATE: December 6, 2006

The Arkansas Insurance Department ("Department") issues this Directive to remind life insurers and life insurance producers conducting business in this state about required compliance with Ark. Code Ann. §§ 23-66-206(2) and 23-66-307, Bulletin 8-2004, and Arkansas Rule 82.

Please be advised that the Department interprets the replacement requirements of Ark. Code Ann. §§ 23-66-206(2) and 23-66-307 and Arkansas Rule 82 to apply to annuities. Therefore, insurers and producers are expected by the Department to insure to the best of their abilities that their clients understand the overall expenses or charges for the contract. Furthermore, the Department will expect that producers and insurers have reviewed and are familiar with Ark. Code Ann. § 23-66-206, 23-66-307, Arkansas Rule 82, and Bulletin 8-2004, as well as the insurer's own guidelines for product sales and solicitations to the elderly. Insurers and producers will be expected to be able to show that prior to recommending to a senior consumer the purchase or exchange of an annuity there existed reasonable grounds for believing that the recommendation was suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments, other insurance products and his or her financial situation and needs. Communications with the consumer forming the basis for the suitability determination must be documented in a written memorandum, which may be supplemented by other records, and should include information concerning:

- The age of the person for whom the product will be purchased;
- The senior's financial status and current assets, including any existing life insurance contracts;
- The senior's risk tolerance (when considering a fixed annuity versus a variable annuity);
- The senior's investment objectives;
- The senior's monthly financial needs;
- The likely need of the contract owner to access cash values in the near future;
- That the senior was notified that there may be tax implications to the sale or exchange and that he should contact his personal tax advisor;
- A breakdown of any fees, costs, features, and surrender or penalty charges associated with partial withdrawals and surrenders, and any limits or conditions for waiving those penalties or charges;
- The amount of the premium enhancement to be credited;

- The trade-off between bonus credits, if any, and product fees and charges must be explained to the senior;
- Information provided by the senior;
- Whether the senior decided to enter into the transaction against the advice of the producer;
- Any other information that may reasonably show suitability of the product for the senior.

Additionally, agents/producers will also document the following information when replacing an existing investment or life insurance product with an annuity:

- Notice sent to the existing contract provider;
- The death benefit, subaccount choices, withdrawal privileges, liquidity, and special features of each contract;
- A comparison of costs, fees, features, surrender charges and benefits associated with each contract and how a bonus feature, if any, may affect these features.
- The rate of return for each contract, if available, or the guaranteed rate of return for each contract, if applicable;
- The current value of the existing contract compared to the initial value of the replacing contract;
- An explanation as to why the replacing contract will better serve the interests of the senior;

The Department also reminds insurers and producers that pursuant to Ark. Code Ann. § 23-66-307 and Arkansas Rule 82, written memoranda, which may be supplemented by other documents to reflect the above required suitability requirements, is required to be maintained for a period of five (5) years. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document. Any violation may be deemed to be an unfair method of competition or an unfair or deceptive act and practice in this state, in violation of Ark. Code Ann. §§ 23-66-201, *et seq.* However, annuities that are for an amount less than \$15,000.00 for the sole purpose of funding prepaid funeral contracts or contracts for funerals and related funeral expenses shall be exempted from these requirements.

If a senior consumer has questions and wishes to gain outside information before purchasing an annuity, producers should encourage and facilitate the involvement of adult family members, this Department's Life and Health Division personnel at 501-371-2800 or 1-800-224-6330, any of the local Arkansas Area Agencies on Aging (AAAs) counselors, attorneys, or other appropriate assistance. Producers should never attempt to dissuade seniors from seeking further assistance from their regular insurance producer, family member, friend, or the types of agencies noted above.

**(signed by Julie Benafield Bowman)**

Julie Benafield Bowman  
Commissioner

December 7, 2006  
Date