



**ARKANSAS INSURANCE DEPARTMENT  
LEGAL DIVISION**

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**Bulletin 26A-91**

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**“NEGATIVE OPTION” CLAIM PAYMENT PROCEDURES AND  
“BENEFICIARY ACCESS” ACCOUNTS**

A delegation of the American Council of Life Insurance (“ACLI”) met with Department Representatives on December 19, 1991 to discuss a possible modification of the Department’s earlier Bulletin 26-91 concerning the reference subject effective January 1, 1992. By way of background it should be noted that the problems that may be posed by accounts of this type were first brought to our attention in May, 1991 when, in a very short period, six or seven Arkansas death claimants were denied their right to receive their policy proceeds when:

- i. Executive Life Insurance Company (California) went into conservatorship and a Boston Bank initially refused to treat the policy proceeds as property of the individual beneficiaries; and
- ii. Another carrier had established a procedure which *prohibited* the payment of death proceeds by check or draft but, rather, *required* death claimants to initially deposit their policy proceeds either with the insurer or in bank institutions chosen thereby.

An investigatory process was undertaken by this Department, and we initially found industry representatives to be defensive and uncooperative. An interesting and helpful dialogue did later ensue with Aetna Life Insurance and Annuity Company and The Penn Mutual Life Insurance Company who where each able to express reasons why “Automatic Benefits Checkbook” systems were, if properly administered, a clear benefit to beneficiaries who had just lost loved ones and who, for a short time, might not exercise the best of judgment on their own behalves. Recognition of the latter point and the fact that these accounts did offer a method for immediate establishment of interest-bearing accounts on behalf of claimants led to our approval or condonation of the basic concept, rather than simply a blanket determination that such accounts concept, rather than simply a blanket determination that such accounts should be prohibited. The Department did insist that beneficiaries play a “meaningful role” in the selection of these accounts, and also, that beneficiaries be guaranteed to receive no less than eight percent (8%) interest *per annum* on such accounts.

Our visit with the ACLI delegation, including Jerry O’Leary of the ACLI staff, however, convinces us that a more moderate “case by case” approach may be appropriate in considering the propriety of particular “Automatic Benefits Checkbook” or “Beneficiary Access” accounts, and, further, that eight percent (8%) interest should not be required of claims proceeds held within these accounts until it has been determined:

- i. That an “unfair” or “deceptive” act has occurred – measured as hereinafter set forth; and
- ii. That there has been a violation of Ark. Code Ann. §23-81-118(b) requiring that claims payments be “paid” or “settled” within 30 days.

We have concluded that “negative option” selection of these accounts will be permitted and will not necessarily be considered to be an “unfair or deceptive act or practice” within the meaning of Ark. Code Ann. §23-66-205 and 23-66-209. In reviewing these programs, on a case by case basis and when and as complaints arise, the Department will be looking at a number of factors to help it determine the inherent “fairness” of the program under consideration. Those factors are:

- i. whether the insurer makes it clear in the proof of loss form presented to the death claimant that he (or she) may “override” the automatic checkbook method of settlement and that he or shee may do so *on the proof of loss form itself*;
- ii. whether the insurer poses institutionalized impediments to the conversion of an initially-selected Automatic Benefits Checkbook or Beneficiary Access account to any other sort of settlement option which the insurer may make available; and
- iii. whether the interest earnings made available to the beneficiary are competitive with or comparable to what he (or she) might earn in a demand access passbook saving account in the State of the beneficiary’s resident.

In the event the Department receives a complaint concerning a carrier’s handling of a negative option establishment of Automatic Benefits Checkbook or Beneficiary Access system, its investigation of the matter will, be directed towards determining whether the carrier has met the above-discussed elements of fairness. If those criteria are not met, consideration will then be given to whether the death proceeds have, in fact, been “paid” or the claim “settled” with the meaning of A.C.A. 23-63-106 and as to whether the carrier should be subjected to possible unfair trade practice sanctions and to the imposition of the eight percent (8%) *per annum* interest penalty of A.C.A §23-81-118(b).

Again, we thank the ACLI for assisting us formulating a more workable response to the Automatic Benefit Checkbook phenomenon.

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INSURANCE COMMISSIONER