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DEPARTMENT OF INSURANCE

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BULLETIN NO. 20-11

DATE: June 19, 2020
TO: Insurers and Producers Writing Annuities in Idaho
FROM: Dean L. Cameron, Director
SUBJECT: Annuity disclosures and filings under Idaho Code §§ 41-1941, 41-1942, and 41-1943

The 2020 Idaho Legislature enacted, and the Governor signed into law, H526 creating additional new disclosure and filing requirements for annuity sales to Idaho consumers. The new law, which is effective July 1, 2020, is codified in Idaho Code §§ 41-1941, 41-1942, and 41-1943, and will affect any person involved in the selling of annuity contracts where the contract owner is a resident of the state of Idaho. This Bulletin shall apply to all group and individual annuity contracts and certificates that are subject to the referenced provisions of Idaho Code, including advertisements and disclosures of annuities filed with the Interstate Insurance Product Regulation Commission. Persons involved in the sale of annuities should carefully review the new standards as codified. H526 may be viewed at:

<https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2020/legislation/H0526.pdf>

The purpose of this Bulletin is to provide additional guidance regarding the legislative amendment as provided in H526 regarding the disclosure requirements, filing requirements and standards for certain policy provisions.

The initial sentence of section 41-1942, Idaho Code, as stated in H526 reads as follows: “No issuer of interest-issued annuity contracts shall advertise....” This sentence contains a typographical error. The sentence should state: “No issuer of interest-indexed annuity contracts shall advertise....”

I. Free Look Period.

H526 removed a paragraph from section 41-1942 that provided a free look period if the disclosure document was not provided at time of application. This change did not remove the general free examination requirement on all annuity contracts of twenty days. See section 41-1935. Given that H526 requires the disclosure document always be provided at time of application, the additional free look provision would no longer be applicable.

II. Disclosure Requirements.

H526 strengthened the disclosure requirements, in particular at the time of application, as explained below:

A. Meeting with the Proposed Applicant.

- i. Face-to-face meeting. Where an application for an annuity contract is taken in a face-to-face meeting, the applicant shall be given the disclosure document and the buyer's guide at the time of application **and** at the time of the contract delivery. The form of the disclosure document and the buyer's guide shall be in the form as prescribed by the Director. The annuity company shall maintain a signed copy of the disclosure document for a minimum of five (5) years after the natural life of the annuity contract.
- ii. Other than a face-to-face meeting. Where an application for annuity contract is taken in a manner other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide, at the time of application **and** at the time of contract delivery. The annuity company shall maintain a signed copy of the disclosure document for a minimum of five (5) years after the natural life of the annuity contract.
- iii. Solicitation for an annuity contract. In any solicitation for an annuity contract provided in other than a face-to-face meeting, the solicitation shall include a statement that the proposed applicant may contact the insurer directly for a free annuity buyer's guide.

B. Required Disclosure Information.

In addition to the minimum disclosure information listed in Idaho Code § 41-1941(6)(a) through (g), the Director is requiring a specific form be considered part of the disclosure requirement for all annuity contracts sold on or after October 1, 2020. The form (or forms) prescribed under Idaho Code § 41-1941(6) is attached to this bulletin and may also be obtained on the Department website.

Additionally, insurers shall submit disclosures for all annuity contracts to Idaho DOI through SERFF no later than October 1, 2020, that demonstrate at least the following minimum information and conditions are being met (additions to code language are italicized):

- i. The generic name of the contract, the company product name if different than the generic name, the form number, and that the contract is an annuity.
- ii. The insurer's legal name, physical address, *website address and telephone number*.
- iii. Description of the annuity contract and its benefits, emphasizing its long-term nature, including examples as follows, where appropriate:
 - a. The guaranteed, nonguaranteed and determinable elements of the contract, and limitations, if any, *including for interest-indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spread*, and an explanation of how they operate;
 - b. An explanation of the initial crediting rate, *or for fixed indexed annuities, an explanation of how the index-based interest is determined*, 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. The periodic income options both on a guaranteed and nonguaranteed 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 annuity contract, and any penalties applicable on withdrawal of values from the contract; and,
 - h. The impact of any rider to the annuity contract.
- iv. The specific dollar amount or percentage of all charges and fees shall be listed with an explanation of how such charges and fees apply.
 - v. Information as to the current guaranteed rate *or indexed crediting rate formula, if applicable*, for new contracts that contains a clear notice that the rate is subject to change.
 - vi. Where projections for nonguaranteed elements of an annuity contract are provided in a disclosure document, there shall be equal prominence given to guaranteed elements.
 - vii. The terms used in the disclosure document shall be clearly defined and use concise language that facilitates the understanding of a typical person within the segment of the public to which the disclosure document is directed.

C. Annual Report.

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the annuity insurer shall provide the annuity contract owner a report, minimally on an annual basis, on the status of the contract, which shall contain at least the following information:

- i. The beginning and end dates of the current report period;
- ii. 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;
- iii. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and,
- iv. The amount of outstanding loans, if any, as of the end of the current report period.

III. Filing Requirements.

The new section, Idaho Code § 41-1942, requires issuers of interest-indexed annuity contracts to submit any advertisement, regardless of the medium, for review and approval by the Director, before any such advertisement shall be used to induce the purchase of an annuity contract. These advertisements are to be submitted through SERFF for approval prior to use.

An issuer that uses or publishes any material marked “Producer Only” (or substantially similar), that will not be shown or relied upon by consumers in the sale of annuities, is not required to submit such material unless requested. However, any advertisements, including “Lead Cards” or other like documents or publications that include product information, including ranges, that consumers may see or have access to or that may be given to the consumer are considered advertisement material and shall be submitted for review and approval to the Idaho Department of Insurance through SERFF.

This includes, but is not limited to, illustrations and other such documents seen by the consumer as part of the sales process. If “Producer Only” documents are shown to consumers, an insurer may be subject to enforcement action due to noncompliance.

In addition, any material that makes no representation of specific products, expected/potential returns or ranges of returns, features, fees, or other terms of an annuity product or contract, does not need to be submitted unless requested. Keep in mind that any such material that includes such information or detail about specific products, features, returns, fees, or other terms of an annuity product or contract does need to be submitted for review and approval to the Idaho Department of Insurance through SERFF.

As to interest-indexed annuity products and contracts that are intended to be sold to residents of the state of Idaho, filed with the Interstate Insurance Product Regulation Commission, as provided under chapter 57, title 41, Idaho Code: any advertisements, regardless of the medium, to be used for such annuity(ies), shall be submitted for review and approval to the Idaho Department of Insurance through SERFF.

Filing interest-indexed annuity advertisements prior to use is a new requirement effective July 1, 2020. As all companies have been affected by the current pandemic, the Department will exercise enforcement discretion, meaning the Department will not consider a company noncompliant, as long as all currently-in-use advertisements are submitted through SERFF to the Department prior to July 1, 2020. As this is a common deadline for all insurers, please be advised that the Department will need additional review time to process the potentially large number of advertisement filings.

Companies that continue use of current advertisements or other documents that are not submitted by July 1, 2020, risk Departmental administrative actions due to noncompliance.

IV. Standards for Policy Provisions for Annuities.

The new section 41-1943 prohibits annuity contracts delivered or issued for delivery in the state of Idaho from having surrender charges above certain thresholds. In addition to no surrender charges applying past ten years from deposit, the surrender charge must not exceed 10% in the first year, 9% in the second year, 8% in the third year, and so on, as shown in the table below. Any annuity contracts with surrender charges above these thresholds may not be sold after July 1, 2020.

Years Since Deposit	1	2	3	4	5	6	7	8	9	10	11+
Max Surrender Charge	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	0%

IDAHO ANNUITY DISCLOSURE

The form is required to be completed for any Annuity Contract executed in the state of Idaho, and it is to be retained with the Annuity Application and Contract during the contract period and for five years after termination. All information, where applicable, must be completed in percentages or dollar amounts.

SECTION I - PRODUCER INFORMATION					
Producer Name:		NIPR Number:			
Producer Address City, State, Zip:		License Number:			
		Email Address:			
Telephone:		Website:			
I (Producer) am licensed to sell annuities, and offer the following insurance/annuity products:					
<input type="checkbox"/> Fixed/Equity-indexed Annuities <input type="checkbox"/> Variable Annuities <input type="checkbox"/> Life Insurance					
I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about:					
<input type="checkbox"/> Mutual Funds / ETFs <input type="checkbox"/> Stocks / Bonds <input type="checkbox"/> Certificates of Deposit					
You can ask how I am compensated. Depending on the particular annuity I sell, I will or may be paid cash compensation as follows:					
<input type="checkbox"/> Commission (Paid by Company) <input type="checkbox"/> Fees (Paid by consumer) <input type="checkbox"/> Other (Describe):					
SECTION II - ANNUITANT INFORMATION (If joint, complete for all)					
Annuitant Name:		<input type="checkbox"/> M <input type="checkbox"/> F	Age at Issue:		<input type="checkbox"/> Ind. <input type="checkbox"/> JT
Annuitant Name:		<input type="checkbox"/> M <input type="checkbox"/> F	Age at Issue:		<input type="checkbox"/> Ind. <input type="checkbox"/> JT
Annuitant Address City, State, Zip:		Email Address:			
		Telephone:			
SECTION III - COMPANY INFORMATION					
Company Name:		ID Certificate of Authority:			
Company Address City, State, Zip:		Email Address:			
Telephone:		Website:			
SECTION IV - CONTRACT INFORMATION					
If projections are used, guaranteed and non-guaranteed elements shall be given equal prominence. Mark as N/A if not applicable. Attach addendum if additional space is needed.					
Product Name:		Form number:			
Product Type:	<input type="checkbox"/> Fixed	<input type="checkbox"/> Equity-indexed	<input type="checkbox"/> Variable		
Application:	<input type="checkbox"/> In person	<input type="checkbox"/> Direct Solicitation	<input type="checkbox"/> Electronic	<input type="checkbox"/> Other:	
Index(es):					
Current Cap Rate:	%	Minimum Cap Rate:	%	Subject to change annually:	<input type="checkbox"/> Y <input type="checkbox"/> N
Participation Rate:	%	Min. Participation Rate:	%	Subject to change annually:	<input type="checkbox"/> Y <input type="checkbox"/> N
Initial Interest Rate:	%	Min. Interest Rate:	%	Subject to change annually:	<input type="checkbox"/> Y <input type="checkbox"/> N
Describe additional elements/ rates/fees (e.g. floors, monthly caps, M&E charges):					
Explain value reductions caused by withdrawals or surrender:					
Explain penalties applicable on withdrawal of values from the contract:					
Death Benefit:	<input type="checkbox"/> Y <input type="checkbox"/> N	If yes, explain how it will be calculated:			

RIDERS TO THE CONTRACT (If more than two, please attach additional paper)				
Rider Name:			Form number:	
Current Fee:	%	Maximum Fee:	%	Subject to change annually: <input type="checkbox"/> Y <input type="checkbox"/> N
Description of Benefit:				
Rider Name:			Form number:	
Current Fee:	%	Maximum Fee:	%	Subject to change annually: <input type="checkbox"/> Y <input type="checkbox"/> N
Description of Benefit:				
ADDITIONAL CONTRACT OR RIDER INFORMATION				

REPLACEMENT	
A replacement is: Any transaction by which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that existing life insurance or an annuity has been or is to be lapsed, forfeited, surrendered, or otherwise terminated.	
This contract <input type="checkbox"/> is <input type="checkbox"/> is not replacing any life insurance policy/product or any annuity contract.	
Company Name:	Policy/Contract Number:
Does the replaced Policy/Contract have surrender charges:	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, describe the surrender charges/penalties:	

Annuitant:

Your signature below indicates that the above-named producer has explained all elements and risks and that you have read and understood the terms and conditions of your new Annuity contract.

Signature: _____

Date: _____

Signature: _____

Date: _____

Producer:

I have explained all elements and risks involved in this Annuity contract.

Signature: _____

Date: _____