

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF LIFE AND HEALTH

Retained Asset Accounts and Other Life Insurance Settlement Options

Proposed New Rules: N.J.A.C. 11:4-61

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:23-20 et seq., 17B:18-1 et seq. and 17B:23-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-079.

Submit comments by May 20, 2011 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) is proposing new rules to provide disclosure and filing requirements related to retained asset accounts (RAAs). On September 24, 2010, the Commissioner of Banking and Insurance (Commissioner) issued Order

No. A10-119, which specified certain requirements with respect to RAAs. On January 5, 2011, the Commissioner issued Order No. A11-101, amending Order No. A10-119 so as to make those requirements more closely reflect the disclosure requirements included in a sample bulletin adopted by the National Association of Insurance Commissioners (NAIC) on December 16, 2010. These proposed new rules codify the requirements in Order No. A11-101.

It is a common business practice for life insurers to provide options for the payment of the proceeds of individual and group life insurance policies to the beneficiaries of individual policies and to the certificate holders or owners of group policies as alternatives to the immediate payout of policy proceeds. One option that has been utilized is an RAA. RAAs are mechanisms whereby the settlement of the proceeds of life insurance policies is accomplished in a manner that affords the life insurance beneficiaries time to consider all available financial options with respect to the disposition of the policy proceeds while earning interest, with the beneficiary retaining the ability to effectuate the withdrawal of the full amount of the policy proceeds at any time. RAAs thus provide life insurance policy beneficiaries with both flexibility and value not found in the payment of benefits in a check directed to the beneficiary. Other settlement options also may be available providing additional flexibility to beneficiaries.

The Department has found that certain life insurance contracts include references to methods of payment other than a direct check for the full proceeds of the policy, but that these may not provide specific information on the RAA or other alternative method(s) of payment offered to beneficiaries or to owners of group life policies by the insurer. In addition, the Department has found that life insurance policy forms and other notices related thereto may not adequately convey to consumers pertinent information related to RAAs and/or other payment options offered by the insurer. In addition, these notices have not been subject to review by the

Department. The Department believes it is reasonable and necessary to assure adequate transparency and disclosure with respect to the utilization of an RAA or other payment option in order to assist consumers confronted with key financial decisions while experiencing bereavement. Such transparency and disclosure will also benefit the life insurance industry.

The Department issued Order No. A10-119 on September 24, 2010, which was amended and superseded in certain respects by Order No. A11-101, to require insurers to provide certain pertinent information related to the use of RAAs and other settlement options. The Department now proposes these new rules to codify those requirements. A summary of the proposed new rules follows.

Proposed N.J.A.C. 11:4-61.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:4-61.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:4-61.3 sets forth disclosure and filing requirements related to the use of RAAs and other settlement options. Specifically, the proposed new rule requires that all insurers authorized or admitted to transact life insurance offering RAAs in this State shall, prior to the issuance of a group policy which provides for the payment of claims through an RAA or on which the opening of an RAA is an option, and prior to the transfer of a death benefit on an individual or group policy to an RAA, provide to the prospective owner of the group policy or to the beneficiary of the death benefit a written notice disclosing in easy-to-understand language, pertinent information related to the use of an RAA. This information shall include, at a minimum, the following:

(1) A statement that payment of the full benefit amount is accomplished by delivery of the draft book/checkbook or similar instrument;

(2) A statement that one draft or check may be written to access the entire amount, including interest, of the RAA at any time;

(3) Notice whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer's minimum balance requirement;

(4) A statement identifying the account as either a checking or draft account and an explanation of how the account works;

(5) Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services;

(6) A description of fees charged, if applicable;

(7) Information about the frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity, and the method of delivery of such statements (that is, via postal mail, e-mail, etc.);

(8) How the interest rate to be credited to the account will be determined;

(9) A statement that the interest earned on the account may be taxable;

(10) A statement that RAA funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (FDIC), but are guaranteed by the State Guaranty Associations. The beneficiary should be advised to contact the National Organization of Life and Health Insurance Guaranty Associations (www.nolhga.com) to learn more about coverage or limitations to his or her account; and

(11) A description of the insurer's policy regarding RAAs that may become inactive. Insurers may provide additional information provided that it is not inconsistent with the information required.

In addition, the proposed new rule provides that insurers authorized or admitted to transact life insurance in this State shall submit to the Department for its review copies of forms and other written material that describe RAAs offered by the insurer being provided by the insurer to beneficiaries of life insurance policies or to prospective owners of group life policies in accordance with the rule and copies of all documents utilized by the insurer to establish an RAA, including agreements, claim forms and any other documents containing the information required to be included in such written materials by (a) above. The Department shall notify the filer within 30 days whether the information fails to comply with the rules.

The proposed new rule also provides that all insurers authorized or admitted to transact life insurance in this State shall provide all beneficiaries of life insurance policies issued in this State information that describes all the settlement options available to the beneficiaries. The information shall be provided with the claim form and use easy-to-understand language that explains how each settlement option works, its benefits to the beneficiaries, how to select the options, and shall include contact information for questions about the options. This information shall not be required to be filed with the Department.

Proposed N.J.A.C. 11:4-61.4 sets forth penalties for violations of this subchapter.

A 60-day comment period is provided for the proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules codify the requirements of Order No. A11-101, amending Order A10-119, by setting forth minimum disclosure requirements related to RAAs and requiring that

such materials be filed with the Department for review to ensure compliance with the standards set forth in the rules, and to require disclosure of other settlement options to beneficiaries. The proposed rules thus provide that persons considering the purchase of a life insurance policy on which the use of an RAA will be required or will be an option, or where other settlement options are provided, will be provided pertinent information that will enable them to make informed decisions related to RAAs prior to consummating such a purchase. Moreover, beneficiaries on life insurance policies on which the use of an RAA or other settlement option will be provided with pertinent information prior to the transfer of a death benefit to an RAA to better enable these individuals to manage the settlement proceeds and the RAA. Equipping purchasers and beneficiaries of life insurance policies with such information will have a positive social impact by better assuring that such parties make informed decisions with respect to RAAs and settlement options other than lump sum payments.

Economic Impact

As noted above, the rules will have a positive impact in that prospective purchasers of life insurance policies and beneficiaries of death benefits on life insurance policies which utilize RAAs or other settlement options as a payment method will receive pertinent information related to the operation of the RAA to better enable them to make informed decisions on the purchase of the policy in the first instance, and to enable beneficiaries to manage the policy proceeds and the RAA or other optional method effectively.

Insurers will be required to bear any costs associated with providing to purchasers and beneficiaries the required information and with filing such information related to RAAs with the Department. The Department believes, however, that any impact on insurers should be minimal

in that the information required to be provided is either already provided by insurers to owners and/or beneficiaries or is currently available and provided upon request. Providing pertinent information also will help ensure that owners and beneficiaries are fully informed of the operations of RAAs, thereby minimizing confusion and possible complaints, and attendant costs, related to misunderstandings related to the operation of the RAA. Moreover, the information required to be provided with respect to RAAs closely reflects the national standard adopted by the NAIC.

Similarly, the cost to file the related materials with the Department should be minimal in that the materials should already be developed. The rules merely require the filing of copies of such materials with the Department to ensure compliance with the requirements in the rules.

The types of professional services required to comply with the proposed new rules include information technology, legal, and administrative. These types of services should already be employed by or contracted for by insurers.

Given the foregoing, the substantial benefits to consumers of insurers' complying with the disclosure and filing requirements imposed by the proposed new rules outweigh the costs attendant upon their doing so.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rules.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed new rules together with their comments on any other aspects of the proposal.

Agriculture Industry Impact

The proposed new rules will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules impose reporting and other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules apply to small businesses, they will apply to insurers domiciled in this State authorized to transact life insurance in this State that utilize RAAs or other settlement options as a method for the payment of death benefits on life insurance policies. The costs of compliance with the proposed new rules are set forth in the Economic Impact above. As noted in the Economic Impact, the Department believes that any additional costs will be minimal, and in fact, the rules’ economic impact on insurers may be beneficial by reducing potential confusion on the part of owners or beneficiaries of policies utilizing RAAs or other settlement options, and the costs associated thereto.

The proposed new rules provide no differentiation in compliance requirements based on business size. As noted in the proposal Summary, the proposed new rules are intended to

provide owners and beneficiaries of life insurance policies with pertinent information related to the operation and management of RAAs or other methods utilized for the payment of benefits on such life insurance policies, so as to enable such individuals to make informed choices about the disposition of policy proceeds. These goals do not vary based on business size.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rules will not have an impact on housing affordability in this State in that the proposed new rules relate to RAAs or other life insurance settlement options.

Smart Growth Development Impact

The proposed new rules will not have an impact on smart growth in this State in that there is an extreme unlikelihood that the rules would evoke the change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey in that the proposed new rules relate to RAAs or other life insurance settlement options.

Full text of the proposed new rules follows:

SUBCHAPTER 61. RETAINED ASSET ACCOUNTS

11:4-61.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the disclosure and filing requirements for retained asset accounts, and disclosure requirements for all settlement options related to life insurance policies issued in this State.

(b) This subchapter shall apply to all insurers authorized or admitted in this State pursuant to Title 17B of the New Jersey Statutes that require or offer as an option a retained asset account or other settlement options for the payment of death benefits on life insurance policies issued in this State.

11:4-61.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“FDIC” means the Federal Deposit Insurance Corporation established by 12 U.S.C. § 227.

“Insurer” means an insurer authorized or admitted pursuant to Title 17B of the New Jersey Statutes to transact life insurance in this State.

“Life insurance” is as defined in N.J.A.C. 11:4-40.2.

“Retained asset account” or “RAA” means any mechanism whereby the settlement of proceeds payable under a life insurance policy is accomplished by the insurer or entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, or through the use of a debit card or other similar instrument upon which the proceeds may be drawn, where those proceeds are retained by the insurer, pursuant to the life insurance contract or a supplementary contract not involving annuity benefits.

11:4-61.3 Disclosure and filing requirements

(a) All insurers offering RAAs in this State shall, prior to the issuance of a group policy which provides for the payment of claims through an RAA or on which the opening of an RAA is an option, and prior to the transfer of a death benefit on an individual or group policy to an RAA, provide to the prospective owner of the group policy or to the beneficiary of the death benefit a written notice disclosing in easy-to-understand language, pertinent information related to the use of an RAA which shall include, at a minimum, the following:

1. A statement that payment of the full benefit amount is accomplished by delivery of the draft book/checkbook or similar instrument;
2. A statement that one draft or check may be written to access the entire amount, including interest, of the RAA at any time;
3. Notice whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirement;
4. A statement identifying the account as either a checking or draft account and an explanation of how the account works;

5. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services;

6. A description of fees charged, if applicable;

7. Information about the frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity, and the method of delivery of such statements (that is, via postal mail, e-mail, etc.);

8. How the interest rate to be credited to the account will be determined;

9. A statement that the interest earned on the account may be taxable;

10. A statement that RAA funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (FDIC), but are guaranteed by the State Guaranty Associations. The beneficiary should be advised to contact the National Organization of Life and Health Insurance Guaranty Associations (www.nolhga.com) to learn more about coverage or limitations to his or her account; and

11. A description of the insurer's policy regarding RAAs that may become inactive.

(b) Insurers may provide any additional information deemed appropriate provided that such information is not inconsistent with the information required to be provided pursuant to (a) above.

(c) All insurers shall submit to the Department for its review copies of forms and other written material that describe RAAs offered by the insurer being provided by the insurer to beneficiaries of life insurance policies or to prospective owners of group life policies in accordance with (a) above and copies of all documents utilized by the insurer to establish an RAA, including agreements, claim forms and any other documents containing the information

required to be included in such written materials by (a) above. The Department shall notify the filer within 30 days whether the information fails to comply with this subchapter.

(d) All insurers shall provide all beneficiaries of life insurance policies issued in this State information that describes all the settlement options available to the beneficiaries. The information shall be provided with the claim form and use easy-to-understand language that explains how each settlement option works, its benefits to the beneficiaries, how to select the options, and shall include contact information for questions about the options. This information shall not be required to be filed with the Department.

11:4-61.4 Penalties

Failure to comply with the provisions of this subchapter shall result in the imposition of penalties as may be authorized by law.