

Florida Proposes Rule for Annuity and Life Insurance Surrender Disclosures

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On September 4, the Florida Department of Financial Services (the "Department") published a Notice of Rule Development for [Proposed Rule 69B-215.090, Florida Administrative Code](#) (the "Proposed Rule") setting out disclosure requirements for certain annuity and life insurance policy surrenders. This Proposed Rule implements [Section 627.4553, Florida Statutes](#), which applies to surrenders of cash value annuities or life insurance policies *"if an insurance agent recommends the surrender . . . and does not recommend that the proceeds from the surrender be used to fund or purchase another annuity or life insurance policy."* In connection with a recommended surrender, Section 627.4553 requires the agent, or the insurer if no agent is involved, to disclose information on a surrendered contract to contract holders. Under the statute, the form must satisfy the information requirements of a rule adopted by the Department. Unlike Florida's suitability rule, the Proposed Rule does not include a Department-proposed form. Rather, it requires disclosure of the following information:

- Identification of the policy or annuity to be surrendered;
- Any surrender charge and the net dollar amount;
- The loss of any guaranteed minimum interest rate and the percentage lost;
- The amount of any possible "tax consequences" resulting from the transaction, which the Proposed Rule defines as "the value of the *annuity* that the insurer knows will be reported [to the IRS] as being taxable";
- The amount of any actual forfeited death benefit; and
- The actual value of any other investment performance guarantees being forfeited.

The Proposed Rule requires the form be provided "before the execution of the surrender check." Although the statute expressly applies only to recommended surrenders, the Proposed Rule states:

"Insurance companies that are not aware of an agent's involvement shall provide the required information." This language appears to create an ambiguity regarding the scope of an insurer's obligations that is at odds with the more limited scope provided in the statute, as it could effectively require insurers to provide the required information even if no recommendation to surrender had been made. Insurance companies may wish to submit comments seeking revisions that remove this ambiguity. The Proposed Rule raises several operational issues for insurers, including:

- How will insurers ensure that the disclosure is provided before the execution of the surrender check?
- Does the requirement to provide the form *before* the execution of the "surrender check" mean that it may not be provided simultaneously with the surrender check, and if so, how long must the insurer wait before sending the surrender check?
- For the disclosure of the guaranteed minimum interest rate and percentage lost, what should be disclosed for products that may have more than one guaranteed rate?
- Is the tax consequences disclosure requirement limited to annuity contracts given the definition of "tax consequences"?
- What is the amount of forfeited death benefit to be disclosed (e.g., would this be the death benefit that would have been payable if death had occurred immediately prior to the surrender payment, etc.)?
- For the disclosure on the actual value of other investment performance guarantees being forfeited, what are "investment performance" guarantees for purposes of the Proposed Rule, and what assumptions must the insurer make in calculating "actual value"?

The notice of the Proposed Rule states that if requested, and not deemed unnecessary, a Rule Development Workshop will be held on September 26 in Tallahassee, Fla. Carlton Fields intends to monitor this workshop and developments regarding the Proposed Rule.

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