

NEW YORK ESTABLISHES RETAINED ASSET ACCOUNT RULES FOR LIFE INSURERS

March 1, 2012

To Our Clients and Friends:

The New York Department of Financial Services (the “Department”) issued Insurance Circular Letter No. 4 (2012), dated February 24, 2012, which sets forth the practices that all authorized life insurers and fraternal benefit societies should follow in New York with respect to the use of retained asset accounts (“RAAs”) to hold life insurance proceeds for beneficiaries.

RAAs Generally

RAAs have been designed by life insurers to hold the proceeds of life insurance policies after the death of the insured. RAAs were first introduced in the early 1980s. The beneficiary is typically issued drafts which may be used to draw upon all or part of the RAA balance at any time. Interest accrues on the RAA balance. The assets that support the RAA are typically held in the life insurer’s general account, and the life insurer bears the risk of investment losses and generally retains any profits from excess investment returns. Although the balances are not guaranteed by the FDIC, they are generally covered by state life and health insurance guaranty associations.

Investigations; NCOIL and NAIC RAA Rules

The use of RAAs by life insurers came under investigation in July 2010 by Andrew M. Cuomo, then Attorney General, and now Governor, of New York. The National Association of Insurance Commissioners (“NAIC”) had previously investigated the use of RAAs in 1993 and 1994 and, in 1994, adopted a Retained Asset Account Sample Bulletin setting forth appropriate disclosures for RAAs. The NAIC revisited the Sample Bulletin in 2010 and adopted further amendments to the Sample Bulletin in December 2010. In November 2010, the National Conference of State Insurance Legislators (“NCOIL”) approved a new model act named the “Beneficiaries’ Bill of Rights” to address RAA practices. Both the NCOIL and NAIC are just models; they must be enacted into law or promulgated by regulation in a state to be applicable to insurer activity in the state. Various states have addressed the regulation of RAAs through new laws, new regulations or a bulletin issued by the state insurance regulator.

New York RAA Rules: Important Differences

While there has been little Department engagement with the life insurance industry regarding RAAs since the 2010 Attorney General investigation, the Circular Letter sets forth considerably stricter and more detailed terms under which authorized life insurers may use RAAs than do the NCOIL and NAIC models. While the New York RAA rules incorporate many of the elements of the NCOIL and NAIC RAA rules, the New York RAA rules differ in the following important ways:

- Under the New York RAA rules, a lump sum settlement (single check for death proceeds) is the required default settlement option. Selection of a RAA requires the affirmative selection by a beneficiary.
- The New York RAA rules require notice of a RAA holder's right to designate a beneficiary for the RAA.
- The New York RAA rules impose disclosure obligations to beneficiaries of existing RAAs (right to designate a beneficiary for the RAA and one draft or check may be used to access the entire RAA balance).
- The New York RAA rules require advance notice to all RAA holders where the interest rate or the formula used for calculating interest is about to change.
- The New York RAA rules require written notice to beneficiaries for each year of inactivity on an RAA.

The Department expects compliance with the Circular Letter for new beneficiaries beginning April 1, 2012, and for existing beneficiaries no later than October 1, 2012.

Comparison: New York vs. NAIC and NCOIL

The attached chart compares the requirements of the New York Circular Letter, the NAIC Sample Bulletin and the NCOIL Beneficiaries' Bill of Rights with respect to RAAs.

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Comparison – RAA Rules Under the New York Circular Letter, the NAIC Sample Bulletin and the NCOIL Beneficiaries’ Bill of Rights

New York Effective Dates

New York RAA rule “Required Disclosures” are effective April 1, 2012.

New York RAA rule “Additional Practices” are effective October 1, 2012.

New York RAA rule “Required Disclosures” marked in ***bold italics*** also apply to existing RAAs and written notice of these rights must be provided by October 1, 2012.

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries’ Bill of Rights (10/2010)
Insurers to Which the RAA Rules Apply	Authorized life insurers and fraternal benefit societies.	Authorized life insurers.	An insurer.
Beneficiaries Subject to RAA Rules	Beneficiary under a life insurance policy or group insurance certificate delivered or issued for delivery in New York (no matter where the beneficiary resides). Beneficiary who resides in New York (no matter where the life insurance policy or group insurance certificate is delivered or issued) – unless another state’s RAA rules provide otherwise.	Not specified.	The defined term “policy” means a policy or a certificate.

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
Selection of a RAA as a Settlement Option	A lump sum settlement (single check for death proceeds) is the required default option. Selection of a RAA requires the <u>affirmative selection</u> by a beneficiary.	Not addressed. May allow a life insurer to make the RAA the default settlement option.	Not addressed. May allow a life insurer to make the RAA the default settlement option.
Required Disclosures			
	List of other settlement options. Unless the policy provides for payment of the death proceeds only in installments, one option should be for payment by a single check for the full proceeds. The option to receive the death proceeds as a single check should be offered as prominently as all other listed available options.	The insurer shall provide the beneficiary, at the time a claim is made, written information describing the settlement options available under the policy and how to obtain specific details relevant to the options.	Beneficiary to be informed of their right to receive a lump sum payment of immediate full payment of benefits.
	Notice that settlement will be made through the delivery of a draft or check kit to the beneficiary if the RAA is selected.	Similar	Similar

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
	<p>Accurate description of the RAA, including (i) that the beneficiary's funds are held by the insurer (or affiliated entity, where applicable) and not in a bank or other institution; (ii) the timing of the funding of the account by the insurer relative to the establishment of the RAA account for the beneficiary (<i>e.g.</i>, whether the insurer fully funds the account, or whether the insurer funds the account when the beneficiary presents the draft or check for payment); and (iii) whether or not the insurer is earning or has the potential to earn income on the beneficiary's funds held in the RAA.</p>	<p>If the insurer settles benefits through a RAA, the insurer shall provide the beneficiary with a supplemental contract that clearly discloses the rights of the beneficiary and obligations of the insurer under the supplemental contract.</p>	<p>Similar to Item (iii)</p>

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
	Name and address of the bank or other institution where the insurer will establish the account. Whether the account is a draft or checking account, and if a draft account is established, how a draft differs from a check.	Similar	Similar
	<i>Notification that one draft or check can be written at any time to access the entire death proceeds or remaining balance in the RAA.</i>	Same	Similar
	Notification of whether or not the RAA funds are insured by the FDIC and, if so, the extent of such insurance.	N/A	Similar

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
	Services provided by the bank or other institution to an RAA holder and the fees associated with such services, including any costs or fees associated with the RAA.	N/A	Similar
	Nature and frequency of statements.	Similar	Same
	<i>Notification of a RAA holder's right to designate a beneficiary for the RAA.</i>	N/A	N/A
	Any restrictions on the usage of RAA drafts or checks, including minimum benefit payment restrictions, the number of withdrawals permitted within any time period and any applicable minimum withdrawal amounts.	N/A	Similar

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
	Approximation of any time delays that an RAA holder should expect to encounter in completing any authorized transaction under an RAA and the anticipated length of such delay.	N/A	Same
	Disclosure of interest rate paid under the RAA, including description of how it is determined and credited to the account.	Similar	Similar
	Choosing an RAA may have tax implications and that the beneficiary should consult a tax advisor.	Similar	Similar
	Notification that the insurer is responsible for any unauthorized use of the RAA and will make the beneficiary whole in the event of an unauthorized use.	N/A	N/A

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
	Any reservation of rights that the insurer may claim to freeze RAA funds or take RAA funds back to set off an alleged claim against the account holder.	N/A	N/A
	Phone number and address where the beneficiary can obtain additional information.	N/A	Similar
	N/A	Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer's minimum balance requirements.	N/A

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
	N/A	RAA funds held by insurers are not guaranteed by either the 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 the coverage limitations to his or her account.	N/A
	N/A. But see “Additional Practices” below – required written inactivity notice.	A description of the insurer’s policy regarding RAAs that may become inactive.	N/A
	N/A	N/A	The following statement: “FOR FURTHER INFORMATION, PLEASE CONTACT YOUR STATE DEPARTMENT OF INSURANCE.”

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
Additional Practices			
	Drafts and draft books (where used) should consistently be referred to as such and not as checks or checkbooks in all correspondence and other materials.	N/A	N/A
	The face of each draft or check (whichever is applicable) should disclose the minimum amount, if any, for which a draft must be written.	N/A	N/A
	Advance notice should be given to all RAA holders where the interest rate or the formula used for calculating interest is about to change, with a reminder that the RAA holder may write a draft or check (whichever is applicable) for the entire balance to close the account.	N/A.	N/A

Requirement	New York Circular Letter (2/2012)	NAIC Sample Bulletin (12/2010)	NCOIL Beneficiaries' Bill of Rights (10/2010)
	<p>After each year of inactivity on an RAA, written notice should be provided to each RAA holder whose funds are subject to the New York State Abandoned Property Law informing the holder that the account has been inactive and reminding the holder that one draft or check (whichever is applicable) can be written to access the entire proceeds and close the account.</p>	<p>N/A. <i>But see</i> "Required Disclosures" above (A description of the insurer's policy regarding RAAs that may become inactive).</p>	<p>N/A</p>