

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter A. Generally
Part 35. Charitable Annuities Requirements and Reporting

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules of 2024 provided as follows:

"SECTION 2. AUTHORITY

This Rule is issued under the authority vested in the Commissioner by Ark. Code Ann. §23-61-108, the Arkansas Administrative Procedure Act, codified at Ark. Code Ann. §§25-15-201, et seq., and Ark. Code Ann. §23-64-304(a), as amended by Act 1203 of 2003 and Act 1697 of 2005, and Ark. Code Ann. § 23-63-201, as amended by Act 496 of 2007. The information called for by this Rule is hereby declared to be necessary and appropriate in the public interest and for the protection of the annuity contract holders in this State."

"SECTION 13. EFFECTIVE DATE AND APPLICABILITY

The effective date of this rule is July 31, 2007."

Subpart 1. Generally

23 CAR § 35-101. Purpose.

(a) The purpose of this part is to establish requirements and standards for organizations and Arkansas cities, towns, municipalities, and counties to obtain and maintain required permits and offer charitable annuities to Arkansas residents, nonresidents, or other legal entities to benefit the bona fide public charitable, educational, or philanthropic agencies or programs.

(b) This part will also clarify procedures and standards for duly organized domestic or foreign nonstock corporations or associations conducted without profit to obtain and maintain required permits and offer charitable annuities to Arkansas residents,

nonresidents, or other legal entities to benefit the bona fide charitable, religious, educational, and philanthropic activities' needs.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-102. Definitions.

As used in this part:

- (1) "Commissioner" means the Insurance Commissioner;
- (2) "Corporate permit applicant" means any corporation conducted that is applying for a permit to sell or distribute fixed-dollar life-only charitable annuity agreements;
- (3) "Corporate permit holder" means any corporation that holds an Arkansas permit to sell or distribute fixed-dollar life-only charitable annuity agreements;
- (4) "Corporation" means any duly organized domestic or foreign nonstock corporation or association conducted without profit;
- (5) "Municipal permit applicant" means any Arkansas municipality that is applying for a permit to sell or distribute fixed-dollar life-only charitable annuity agreements payable from nontax revenues of the municipality;
- (6) "Municipal permit holder" means any Arkansas municipality that holds an Arkansas permit to sell or distribute fixed-dollar life-only charitable annuity agreements payable from nontax revenues of the municipality;
- (7) "Municipal program" means a public charitable, educational, or philanthropic agency or program operated by a municipality that generates nontax revenues;
- (8) "Municipality" means any:
 - (A) City;
 - (B) Town;
 - (C) Municipality;
 - (D) County; or

(E) Two (2) or more such entities acting pursuant to an interlocal cooperation agreement authorized under Arkansas Code § 25-20-101 et seq.;

(9) "Permit applicant" means any corporation or Arkansas municipality that is applying for a permit to sell or distribute fixed-dollar life-only charitable annuity agreements; and

(10) "Permit holder" means any corporation or Arkansas municipality that holds an Arkansas permit to sell or distribute fixed-dollar life-only charitable annuity agreements.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-103. Participants.

(a) This part will allow corporate permit applicants to apply for a special permit to make fixed-dollar life-only annuity agreements with donors to their corporation that:

(1) Either:

(A) Has engaged in active operation for at least five (5) years prior to receiving the permit which have been solely engaged in operation of public charitable, religious, missionary, educational, or philanthropic agencies or programs; or

(B) Is affiliated with a corporation or municipality which has been actively engaged in operation of public charitable, religious, missionary, educational, or philanthropic agencies or programs for five (5) years; and

(2) Has maintained an adequate level of management expertise which is readily available to the entity requesting the permit.

(b) This part will also allow municipal permit applicants to apply for a special permit to make fixed-dollar life-only annuity agreements payable from nontax revenues of the municipality with donors to their municipal programs provided the municipal permit applicant has been actively involved for at least five (5) years prior to receiving the permit in the operation of public charitable, educational, or philanthropic agencies or programs including, but not limited to:

(1) Libraries;

(2) Museums; and

(3) Governmentally owned public hospitals.

(c) No corporation or Arkansas municipality shall make or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this part.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-104. Exemptions.

(a) No municipality or corporation organized under the laws of another state shall be permitted to make annuity agreements in this state unless it complies with all requirements of this part imposed upon municipalities or corporations, except that a municipality or corporation organized under the laws of another state may invest its reserves and surplus funds in securities permitted by the laws of its state of domicile.

(b) No municipality or corporation shall make, sell, distribute, or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this part.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-105. Application and annual statement — General requirements.

(a)(1) Application A and Annual Statement B are intended to be guides in the preparation of the application and annual reports required by the act.

(2) The application and annual statement filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items.

(3) All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted.

(4) Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b)(1) Two (2) complete copies of each statement including exhibits and all other papers and documents filed as a part thereof shall be filed with the Insurance Commissioner by personal delivery or mail addressed to:

Insurance Commissioner of the State of Arkansas
Attention: Finance Division
1200 West Third Street
Little Rock, Arkansas 72201-1904

(2) At least one (1) of the copies shall be manually signed in the manner prescribed on the form.

(3) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application and annual statement.

(c)(1) The application and annual statement should be prepared on paper eight and one-half inches by eleven inches (8 1/2" x 11") in size.

(2) Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size.

(3) All copies of any statements, financial statements, or exhibits shall be:

(A) Clear;

(B) Easily readable; and

(C) Suitable for photocopying.

(4) Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(5) The application and annual statement shall be in the English language and monetary values shall be stated in United States currency.

(6) If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language, and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-106. Application and annual statement — Incorporation by reference, summaries, and omissions.

(a)(1) Information required by any item of Application A and Annual Statement B may be incorporated by reference in answer or partial answer to any other item.

(2) Information contained in any financial statement, annual report, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Application A and Annual Statement B provided such document or paper is filed as an exhibit to the statement.

(3)(A) Excerpts of documents may be filed as exhibits if the documents are extensive.

(B) Documents currently on file with the Insurance Commissioner which were filed within three (3) years need not be attached as exhibits.

(4) References to information contained in exhibits or in documents already on file shall:

(A) Clearly identify the material; and

(B) Specifically indicate that such material is to be incorporated by reference in answer to the item.

(5) Matter shall not be incorporated by reference in any case where such incorporation would render the statement:

(A) Incomplete;

(B) Unclear; or

(C) Confusing.

(b)(1) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document.

(2) In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three (3) years and may be qualified in its entirety by such reference.

(3)(A) In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one (1) of such documents need be filed with a schedule identifying the omitted documents.

(B) The schedule shall identify the material details in the omitted documents that vary from the filed document.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-107. Application and annual statement — Additional information and exhibits.

(a) In addition to the information expressly required to be included in Application A and Annual Statement B, the Insurance Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading.

(b)(1) The person filing may also file such exhibits as he or she may desire in addition to those expressly required by the statement.

(2) Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

(c) Changes to Application A and Annual Statement B shall:

(1) Include on the top of the cover page the phrase: "Change No. (insert number) to"; and

(2) Indicate the date of the change and not the date of the original filing.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-108. Request for annuity permit.

Before making an annuity agreement, every permit applicant shall file, in an application in a form similar to that found in Application A, with the Insurance Commissioner for his or her approval information regarding the following:

(1) A description of annuity rates in the form of a:

(A) Schedule of its maximum annuity rates that shall be computed on the basis of the annuity standard adopted by it for calculating its reserves; or

(B) Statement certifying that it adopts and will adhere to the annuity rates as published from time to time by the American Council on Gift Annuities or its successor until the corporation or municipality advises the commissioner to the contrary in writing and files a schedule of its new proposed maximum annuity rates for approval;

(2) A copy of the current form or forms of the agreement to be issued to annuitants in the State of Arkansas;

(3)(A) Complete, audited financial reports of the permit applicant for each of the five (5) years preceding the application.

(B) For a municipality, the report shall cover the municipal program included in the application.

(C) The report should be prepared by an independent certified public accountant in accordance with generally accepted accounting principles;

(4) A certified copy of the permit applicant's directors' or governing board's resolution requiring segregation of assets to ensure that annuity funds will not, without exception, be applied towards the payment of other debts or obligations of the permit applicant; and

(5) The form filings and approvals shall meet the requirements of Arkansas Code §§ 23-79-109 and 23-79-110.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-109. Requirements for permit holders.

(a) Reserves.

(1) Each corporation or municipality shall maintain reserves with respect to the annuity or income stream that it has agreed to pay to a charitable donor by:

(A) Using the manner set forth in the Standard Valuation Law for Life Insurance and Annuities, Arkansas Code § 23-84-101 et seq., concerning the standard valuation law for life insurance and annuities;

(B) Using the present value of all future benefits to be paid to the donor annuitant based upon the most recent mortality table published by the Internal Revenue Service; or

(C) Maintaining account reserves in an amount equal to the aggregate values determined at the dates of contribution of all assets received from donors with respect to annuities for annuitants who are then living.

(2) The municipality shall maintain reserves as part of the separate assets of the municipal program.

(3) If the Insurance Commissioner finds the reserve established by a permit holder inadequate at any time, the commissioner:

(A) Shall order the permit holder to increase its reserve accordingly; or

(B) May stipulate the reserving method for the permit holder to rectify the reserve deficiency.

(4) In determining reserves, a deduction shall be made for all or any portion of an annuity risk that is reinsured by a life insurance company authorized to do business in this state.

(b) Accounts.

(1) Unless otherwise permitted by the commissioner, each permit holder shall maintain a segregated account or accounts for its charitable gift annuities.

(2) The segregated account or accounts shall be used solely to pay the charitable gift annuity obligations of the permit holder.

(c) Assets.

(1) Each permit holder shall maintain net admitted assets at least equal to the greater of:

(A) The sum of its reserves on its outstanding agreements, all other liabilities, and a surplus of at least ten percent (10%) of the reserves;

(B) The amount of fifty thousand dollars (\$50,000); or

(C) At least equal to the amount of the reserves plus all other outstanding liabilities, if reserves have been calculated by maintaining reserves in an amount equal to the aggregate values determined at the dates of contribution of all assets received from donors with respect to annuities for annuitants who are then living.

(2) The required admitted assets shall be invested:

(A) Only in securities permitted by the provisions of Arkansas Code §§ 23-63-801 – 23-63-833, 23-63-835, 23-63-836, 23-63-839, and 23-63-840; or

(B) In accordance with the provisions of the prudent investor rule stated in Arkansas Code §§ 24-2-610 – 24-2-619.

(3) The investments shall be held by a custodian in accordance with Arkansas Code § 23-69-134(b)(4).

(d) Annual statements.

(1) All permit holders shall be required to file an annual financial statement of their operations and accounts and schedule of outstanding annuities with applicable reserves within ninety (90) days of the end of their fiscal year.

(2) The statement shall be prepared by a certified public accountant in accordance with generally accepted accounting principles detailing the financial condition and status of the corporation or municipal program as of the conclusion of its most recent fiscal year.

(3) For permit holders investing in assets under subdivision (c)(2)(B) of this section, each annual statement shall be accompanied by:

(A) A description of the permit holder's investment philosophy for charitable gift annuities and how the investments of the permit holder are designed to meet future charitable gift annuity obligations;

(B) A statement from the permit holder identifying the members of the investment committee charged with making investment decisions regarding charitable gift annuity assets, including a description of each committee member's investment expertise; and

(C) A certification of the permit holder's directors that attests that its investments and investment transactions match the organization's philosophy and meet the standards of the prudent investor rule stated in Arkansas Code §§ 24-2-610 – 24-2-619.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-110. Violations.

If after notice and hearing the Insurance Commissioner finds that a permit holder having a permit has failed to comply with the requirements of this part, the commissioner may revoke or suspend the permit or order the permit holder to cease making new annuity contracts until it complies.

Authority. Arkansas Code § 23-61-108.

23 CAR § 35-111. Severability.

Any section or provision of this part held by the court to be invalid or unconstitutional will not affect the validity of any other section or provision.

Authority. Arkansas Code § 23-61-108.

Appendix A. Application for Charitable Annuity Permit

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/148/23CARpt.35Appendix.pdf>