

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter B. Life, Health, and Accident
Part 81. Variable Annuity Contracts

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

"*Provisions of this rule as it pertains to variable life insurance have been superseded by Rule and Regulation 33. See Article XIII of Rule and Regulation 33."

"§ 1. Authority and scope

1.1 These rules are hereby promulgated and adopted pursuant to the authority provided in Arkansas Stat. § 66-2633 with respect to variable annuity contracts and similar funds held under life insurance policies, and pursuant to the authority provided in Arkansas Stat. §§ 66-3523 and 66-3524 with respect to separate accounts established in connection with group pension, profit-sharing, or annuity plans. Present Rule and Regulation 6, effective June 30, 1967, as amended September 12, 1969, is hereby withdrawn and is replaced by this Rule."

"§ 11. Effective date

11.1 This Rule shall become effective when filed as required by law.
History.-Revised effective October 13, 1970."

Subpart 1. Generally

23 CAR § 81-101. Definitions.

As used in this part:

- (1) "Agent" means any person, corporation, partnership, or other legal entity which under the laws of this state is licensed as a life insurance agent or broker;
- (2) "Securities examination" as used in 23 CAR § 81-108(c) and § 81-108(e)

means any one (1) of the following examinations:

(A) Any state securities sales examination accepted by the United States Securities and Exchange Commission;

(B) The National Association of Securities Dealers Examination for Principals or Examination for Qualification as a Registered Representative;

(C) The various securities examinations required by:

(i) The New York Stock Exchange;

(ii) The NYSE American;

(iii) The Pacific Stock Exchange; or

(iv) Any other registered national securities exchange;

(D) The United States Securities and Exchange Commission test given pursuant to Section 15(b)(8) of the Securities Exchange Act of 1934; or

(E) Part I of the examination recommended for the testing of variable annuity agents by the National Association of Insurance Commissioners, which was adopted by the insurance department of any state or territory of the United States and which was approved for use by such department by the United States Securities and Exchange Commission, if such examination was successfully completed prior to July 1, 1970;

(3) "Variable contract" means any policy or contract that provides for life insurance or annuity benefits that vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in Arkansas Statutes §§ 66-2633 and 66-3523; and

(4) "Variable contract agent" means an agent who shall sell or offer to sell any variable contract.

Authority. Arkansas Code § 23-61-108.

23 CAR § 81-102. Qualification of insurance companies to issue variable contracts.

(a) No domestic, foreign, or alien legal reserve insurer shall deliver or issue for delivery within this state variable contracts unless:

(1) It has a certificate of authority to do a life insurance business in this state;

(2) With respect to contracts issued under the authority of Arkansas Statutes §§ 66-3523 – 66-3527, not less than two million five hundred thousand dollars (\$2,500,000) in capital and surplus; and

(3) The Insurance Commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state.

(4) In this connection, the commissioner shall consider among other things:

(A) The history and financial condition of the company;

(B) The character, responsibility, and fitness of the officers and directors of the company; and

(C) The law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

(b) If the company is a subsidiary of an admitted life insurance company or is affiliated with such company through common management or ownership, it may be deemed by the commissioner to have met the provision of subdivision (a)(3) of this section if either it or the parent or the affiliated company meets the financial and other requirements hereof.

(c) Before any company shall deliver or issue for delivery variable contracts within this state it shall submit to the commissioner:

(1) A general description of the kinds of variable contracts it intends to issue;

(2) If requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable contracts; and

(3) If requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

Authority. Arkansas Code § 23-61-108.

Codification Notes. "NAIC" means the National Association of Insurance Commissioners.

23 CAR § 81-103. Separate account or separate accounts.

(a) A domestic company issuing variable contracts shall establish one (1) or more separate accounts pursuant to Arkansas Statutes § 66-2633, § 66-3523, or § 66-3524, subject to the following provisions of this section:

(1) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subdivision (a)(2), amounts allocated to any separate account and accumulations thereon may be invested and reinvested in accordance with Arkansas Statutes § 66-2633(l) and provided that the restriction of Arkansas Statutes § 66-2620 shall not apply to the investments of a unit investment trust;

(2)(A) Reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest may be maintained in a separate account if a portion of the assets of such separate account at least equal to such reserve liability is invested in accordance with the laws and rules of this state governing the investments of life insurance companies.

(B) Such portion of the assets also shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(C) If a variable contract includes incidental minimum guarantees as referred to in 23 CAR § 81-105(d)(3), this subdivision(a)(2) shall apply only to the reserve for any excess of such minimum guarantees over the reserves for the benefits that would be payable under the contract if there were no such minimum guarantees;

(3)(A) With respect to seventy-five percent (75%) of the market value of the total assets in a separate account no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed ten percent (10%) of the

market value of the assets of said separate account.

(B) Provided, however, that the Insurance Commissioner may waive such limitation if, in his or her opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state;

(4)(A) Unless otherwise permitted by law or approved by the commissioner, no company shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurance company and its separate accounts, in the aggregate, will own more than ten percent (10%) of the total issued and outstanding voting securities of such issuer, provided that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

(B) The same separate account may not be used for both variable annuities and variable life insurance, provided, however, that this shall not be applicable to a company that is registered as an investment company under the Investment Company Act of 1940; and

(5) The limitations provided in subdivisions (a)(3), (4), and (5) of this section shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with subdivisions (a)(3) and (a)(4) of this section.

(b) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation or, if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account, provided that unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the benefits and funds referred to in subdivision (a)(2)(A) of this section shall be valued in accordance with the rules otherwise applicable to the company's assets.

(c) If and to the extent so provided under the applicable contracts, that portion of

the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(d)(1) Notwithstanding any other provisions of law a company may:

(A) With respect to any separate account registered with the United States Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company; or

(B)(i) With respect to any separate account registered with the United States Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the company.

(ii) Such committee, board, or other body may have the power, exercisable alone or in conjunction with others to manage such separate account and the investment of its assets.

(2) A company, committee, board, or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect, provided that the commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.

(e)(1) No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one (1) or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a

transfer of:

(A) Cash; or

(B) Securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the commissioner.

(2) The commissioner may authorize other transfers among such accounts if, in his or her opinion, such transfer would not be inequitable.

(f) The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner.

(g)(1) Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee, board, or similar body.

(2) No officer or director of such company nor any member of the committee, board, or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

Authority. Arkansas Code § 23-61-108.

Codification Notes. The Investment Company Act of 1940 was enacted as Pub. L. No. 76-768 and is codified at 15 U.S.C. §§ 80a-1 – 80a-64.

23 CAR § 81-104. Filing of contracts.

The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and rules of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate.

Authority. Arkansas Code § 23-61-108.

23 CAR § 81-105. Contract providing for variable benefits.

(a)(1) Any variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits.

(2) Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall:

(A) State that such dollar amount will vary to reflect investment experience; and

(B) Contain on its first page a clear statement to the effect that the benefits thereunder are on a variable basis.

(b) Illustrations of benefits payable under any variable contract shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of benefits.

(c) No individual deferred variable annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or provisions which in the opinion of the Insurance Commissioner are more favorable to the holders of such contracts:

(1)(A) A provision that there shall be a period of grace of thirty (30) days or of one (1) month, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force.

(B) The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom;

(2)(A) A provision that, at any time within one (1) year from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be

reinstated upon payment to the insurer of such overdue payments as required by the contract, and of all indebtedness to the insurer on the contract, including interest.

(B) The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom; and

(3)(A) A provision specifying the options available in the event of default in a periodic stipulated payment.

(B) Such options may include an option to surrender the contract for a cash value as determined by the contract and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.

(d) No individual variable life insurance policy shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or provisions which in the opinion of the Insurance Commissioner are more favorable to the holders of such policies:

(1)(A) A provision that there shall be a period of grace of thirty (30) days or of one (1) month, within which payment of any premium after the first may be made, during which period of grace the policy shall continue in force, but if a claim arises under the policy during such period of grace before the overdue premiums or the deferred premiums of the current policy year, if any, are paid, the amount of such premiums, together with interest not in excess of six percent (6%) per annum, may be deducted from any amount payable under the policy in settlement.

(B) The policy may contain a statement of the basis for determining any variation in benefits that may occur as a result of the payment of premium during the period of grace;

(2) A provision that the policy will be reinstated at any time within three (3) years from the date of default, unless the cash surrender value has been paid or unless the period of extended insurance has expired, upon the application of the insured and the production of evidence of insurability, including good health, satisfactory to the

insurer, and the payment of an amount not exceeding the greater of:

(A) All overdue premiums and the payment of any other indebtedness to the insurer upon said policy with interest at a rate not exceeding six percent (6%) per annum compounded annually; or

(B) One hundred ten percent (110%) of the increase in cash surrender value resulting from reinstatement; and

(3)(A)(i) A provision for cash surrender values and paid-up insurance benefits available as nonforfeiture options under the policy in the event of default in a premium payment after premiums have been paid for a specified period.

(ii) If the policy does not include a table of figures for the options so available, the policy shall provide that the company will furnish at least once in each policy year a statement showing the cash value as of a date no earlier than the prior policy anniversary.

(B)(i) The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the insurance commissioner of the jurisdiction in which the policy is delivered, shall be in accordance with actuarial procedures that recognize the variable nature of the policy.

(ii) The method of computation must be such that, if the net investment return credited to the contract at all times from the date of issue should be equal to the assumed investment increment factor if the contract provides for such a factor, or 3Y2% if not, with premiums and benefits determined accordingly under the terms of the policy, the resulting cash values and other nonforfeiture benefits would be at least equal to the minimum values required by Arkansas Statutes § 66-327 (Standard Nonforfeiture Law) for a fixed-dollar policy with such premiums and benefits.

(iii)(a) The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable.

(b) Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee under a policy which provides for an assumed investment increment factor that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net

investment return credited to the contract at all times from the date of issue had been equal to such factor.

(e)(1)(A) Any variable annuity contract delivered or issued for delivery in this state:

(i) Shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder; and

(ii) May guarantee that expense and/or mortality results shall not adversely affect such dollar amounts.

(B) In the case of an individual variable annuity contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the expense and mortality factors shall be stipulated in the contract.

(2) In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

(A) The annual net investment increment assumption shall not exceed five percent (5%), except with the approval of the Insurance Commissioner; and

(B) To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from:

(i) The Annuity Mortality Table for 1949, Ultimate;

(ii) Any modification of that table not having a lower life expectancy at any age; or

(iii) If approved by the Insurance Commissioner, from another table.

(3) "Expense", as used in this subsection, may exclude some or all taxes, as stipulated in the contract.

(f) Any individual variable life insurance policy delivered or issued for delivery in this state shall:

(1) Stipulate the investment increment factor to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder; and

(2) Guarantee that expense and mortality results shall not adversely affect such dollar

amounts.

(g)(1) The reserve liability for variable contracts shall be established pursuant to the requirements of the Standard Valuation Law for Life Insurance and Annuities, Arkansas Code § 23-84- 101 et seq., in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(2) In like manner, Arkansas Statutes § 66-3302, § 66-3315, § 66-3320, § 66-3321, § 66-3322, § 66-3327, § 66-3508(3), § 66-3323, § 66-3325, § 66-3326, § 66-3509P, § 66-3501, and § 66-3520 shall be applicable to variable contracts submitted for approval to the extent necessary to recognize the variable nature of the benefits and mortality guarantees therein provided and the requirements of this part.

Authority. Arkansas Code § 23-61-108.

23 CAR § 81-106. Required reports.

(a)(1) Any company issuing individual variable contracts shall mail to the contractholder at least once in each contract year after the first at his or her last address known to the company, a statement or statements reporting the investments held in the separate account.

(2) The company shall submit annually to the Insurance Commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

(b) Any company issuing individual variable contracts shall mail to the contractholder at least once in each contract year after the first at his or her last address known to the company, a statement reporting as of a date not more than four (4) months previous to the date of mailing:

(1) In the case of an annuity contract under which payments have not yet commenced:

(A) The number of accumulation units credited to such contract and the dollar value of a unit; or

(B) The value of the contractholder's account; and

(2) In the case of a life insurance policy, the dollar amount of the death benefit.

Authority. Arkansas Code § 23-61-108.

23 CAR § 81-107. Foreign companies.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by this part, the Insurance Commissioner, to the extent deemed appropriate by him or her in his or her discretion, may consider compliance with such law or regulation as compliance with this part.

Authority. Arkansas Code § 23-61-108.

23 CAR § 81-108. Examination of agents and other persons.

(a)(1) No agent shall be eligible to sell or offer for sale a variable annuity contract unless, prior to making any solicitation or sale of such a contract, he or she also be licensed as a variable annuity agent.

(2) Any agent who participates only in the sale or offering for sale of variable contracts that are not registered under the federal Securities Act of 1933 need not be licensed as a variable annuity agent.

(b) Any agent applying for a license as a variable annuity agent shall do so by filing with the State Insurance Department "Uniform Form AP for Securities Salesmen, Variable Annuity Salesmen, and Other Associated Persons".

(c)(1) The licensing as a variable annuity agent of any agent complying with subsection (b) of this section shall not become effective until such agent shall have satisfactorily passed both a written securities examination and variable annuity examination.

(2) The variable annuity examination shall be composed of at least fifteen (15) questions, but not more than fifty (50) questions, concerning the history, purpose,

regulation, and sale of variable annuities.

(d)(1) The variable annuity examination will be given in such places and at such times as the Insurance Commissioner shall from time to time designate.

(2) Upon application for license as a variable annuity agent, the applicant shall be notified of the date of the next examination.

(e) Any applicant for license as a variable annuity agent shall be required to present evidence that he or she:

(1) Has previously passed a securities examination as defined in 23 CAR § 81-101(2);

(2) Is currently registered with the United States Securities and Exchange Commission as a broker-dealer; or

(3) Is currently associated with a broker-dealer and has met qualification requirements with respect to such association.

(f) Every applicant applying for license as a variable annuity agent shall:

(1) Satisfactorily complete the variable annuity examination required by subsection (c) of this section with a grade of at least seventy percent (70%); or

(2) Present evidence of successful completion of a variable annuity examination given under the supervision of an insurance department of any state or territory of the United States.

(g) Any applicant failing to pass the variable annuity examination required by subsection (c) of this section may take such examination again twenty (20) days after the first and any subsequent examinations.

(h)(1) Every application for a license as a variable annuity agent shall be accompanied by an examination fee of ten dollars (\$10.00).

(2) A fee of ten dollars (\$10.00) will be charged for each reexamination administered to an applicant.

(i) Report of the results of any examination given pursuant to this part shall be made by the State Insurance Department on "Commissioner's Report of Examination", a copy of which is attached hereto as Exhibit A.

(j) Except as modified by this part, the rules of the State Insurance Department

governing the licensing of life insurance agents including examinations therefor shall apply hereto.

(k)(1)(A) Results of the examination administered pursuant to subsection (c) of this section will be reported by the State Insurance Department to the applicant's company.

(B) In addition, examination results will be reported by the State Insurance Department to any other state insurance department requesting confirmation of the examination grade, either upon request of such department or upon request of the applicant or his or her company.

(2) A charge of fifty cents (50¢) shall be made for the second and each subsequent report of examination results.

(l) Records of the examination grade of each applicant upon an examination administered by the State Insurance Department, or upon an examination deemed to be a satisfactory alternative examination and administered by another agency or authority and reported to the State Insurance Department, will be retained in the file pertaining to said applicant.

(m) Any person licensed in this state as a variable annuity agent shall immediately report to the commissioner:

(1) Any suspension or revocation of his or her variable annuity agent's license or life insurance agent's license in any other state or territory of the United States;

(2) The imposition of any disciplinary sanction (including suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him or her by any national securities exchange, national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable annuities; and

(3) Any judgment or injunction entered against him or her on the basis of conduct deemed to have involved:

(A) Fraud;

(B) Deceit;

(C) Misrepresentation; or

(D) Violation of any insurance or securities law or regulation.

(n)(1) The commissioner may reject any application or suspend or revoke or refuse to renew any variable annuity agent's license upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this state.

(2) The rules governing any proceeding relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable annuity agent's license.

(o) Renewal of a variable annuity agent's license shall follow the same procedure established for renewal of an agent's license to sell life insurance contracts in this state.

Authority. Arkansas Code § 23-61-108.

23 CAR § 81-109. Information to be furnished to an applicant for a variable contract.

(a) The following information shall be furnished to an applicant for a variable life insurance contract prior to execution of the application:

(1) A summary description of the insurance company and its principal activities;

(2) A summary explanation in nontechnical terms of the principal variable features of the contract and of the manner in which any variable benefits reflect the investment experience of a separate account;

(3) A brief description of the investment policy for the separate account with respect to such contract;

(4) A list of investments in the separate account as of a date not earlier than the end of the last year for which an annual statement has been filed with the insurance commissioner of the state of domicile; and

(5) Summary financial statements of the insurance company and such separate account based upon the last annual statement filed with such commissioner, except that for a period of four (4) months after the filing of any annual statement the summary required hereby may be based upon the annual statement immediately preceding such last annual statement filed with such commissioner.

(b) The insurance company may include such additional information as it deems appropriate.

(c) A copy of the statement containing the foregoing information shall be filed with such commissioner prior to any use thereof and shall be subject to disapproval if found to be inaccurate or misleading.

Authority. Arkansas Code § 23-61-108.

Appendix A. Commissioner's Report of Examination

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/346/23CARpt.81ExhibitA.pdf>