



Florida Revises Effective Date for Annuity Suitability Rule and Forms

As noted in our November 4th [Client Alert](#), the Florida Department of Financial Services ("DFS") recently approved Rule 69B-162.011, F.A.C. (the "Final Rule"), which requires the use of DFS annuity suitability and replacement comparison forms (the "DFS' Forms") in connection with sales of annuities to persons aged 65 and older. At the time of our November 4th Client Alert, the Rule's "effective date," as published on the Florida Administrative Weekly ("FAW") website, was November 15, 2009. The FAW website was updated and reflects that the Final Rule's effective date is December 25, 2009 (available [here](#)). Also, DFS' Division of Agent and Agency Services has posted on its website an "Industry Awareness Notice Regarding Annuity Sales to Seniors" (available [here](#)) that states the DFS' Forms will become effective on December 25, 2009.

With respect to insurers wanting to adapt the suitability and replacement comparison forms for their own use (instead of using the DFS' Forms), the Rule requires the written approval of any modifications by DFS (other than certain non-substantive modifications specified in the Rule, such as the addition of an insurer's name, contact information, or trademark). DFS has advised us that the agency would coordinate with the Office of Insurance Regulation on approval of such forms. DFS, however, was unable to comment on the approval timeframe, except to note that insurers intending to use their own forms should file them with DFS as soon as possible.

For those insurers and producers who foresee having difficulties complying with the Final Rule by the December 25th effective date, such insurers and producers may petition DFS for a waiver or variance of the Final Rule under Section 120.542 of the Florida Administrative Procedures Act. Waivers would require a demonstration that "the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness." Because the administrative process can be lengthy, DFS advises that insurers and petitioners seeking a waiver or variance should file their petition as soon as possible.

If you have any questions, please contact Ann Black at ay@jordenusa.com or (305) 347-6859, Steven Kass at sk@jordenusa.com or (305) 347-6899, or Karen Benson at kea@jordenusa.com or (305) 347-6871.

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