



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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Roger A. Sevigny
Commissioner

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Deputy Commissioner

BULLETIN

Docket No.: INS No. 13-021-AB

To: All Life Insurance Companies Licensed to do Business in New Hampshire and Licensed Producers with lines of Authority in Life and Variable Annuities

FROM: Roger A. Sevigny 

DATE: August 16, 2013

RE: Withdrawal of Bulletin Docket No.: INS 10-004-AB Elimination of the Exclusion of Same-Gender Couples from Marriage and the impact on Annuity contracts

On June 26, 2013, the U.S. Supreme Court, in the case of United States v. Windsor, Executor of the Estate of Spyer (Slip Opinion No. 12-307), struck down section 3 of the federal Defense of Marriage Act as unconstitutional. As a result of that decision, INS No. 10-004-AB is being withdrawn.

Insurers should no longer provide the disclosure discussed in INS No. 10-004-AB as such disclosure no longer accurately reflects the current state of the law and has the potential to cause a same-sex spouse to not take advantage of the spousal deferral options to which he or she is now entitled. All spouses must receive the same default distribution.

Policy Forms

If the disclosure discussed in INS No. 10-004-AB was provided in a separate amendment or endorsement, insurers should immediately stop adding the form to new issue of annuity contracts, certificates and applications. Insurers do not need to make a filing with the Department in order to stop using the endorsement form.

If the disclosure discussed in INS No. 10-004-AB was included in a contract, certificate or application and bracketed as variable language, no new filing is necessary and insurers shall remove the disclosure language for all new policies being issued and issue an amendment to existing policyholders reflecting the removal of the disclosure in addition to advising the policyholder that the favorable tax treatment provided by federal tax law to a surviving spouse is now available to all spouses.

If the disclosure discussed in INS No. 10-004-AB was not filed and approved as variable language then a new policy form including a new form number will need to be submitted to the Compliance Division for approval. An expedited review will be done if the SERFF submission is accompanied by a letter under supporting documentation tab certifying that:

- 1) The expedited review submission is for the removal of the disclosure language.
- 2) The previously approved SERFF Tracking number and date of approval is included.
- 3) Redline copies submitted under supporting documentation tab show the changes and
- 4) The letter is signed by the appropriate officer of the filing company certifying that no other changes to the previously approved forms have been made, other than removing the Defense of Marriage Act disclosure.

Insurers may continue to use previously approved forms for new issue while pursuing approval of new forms but in no event more than 90 days from the date of this bulletin.

Insurers and their appointed producers, however, have an obligation to make certain that when communicating with consumers, the consumer is informed that as a result of the Supreme Court decision, the disclosure is no longer accurate and is in the process of being updated.

For questions about this filing directive please contact Michael Wilkey, Director Compliance and Consumer Services, at (603) 271-2261 or by email: Michael.Wilkey@ins.nh.gov