Banking Without Guarantees? Public Policy Considerations Concerning Insurance Company Retained Asset Accounts

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Introduction

During a child’s early years, many lessons are learned about the way the world operates. There are many lessons about language - schoolchildren learn how to write cursive, to write paragraphs, and also how to spell. There are lessons about the various continents and countries about the world, the various cultures, and the various careers one can pursue after entering into adulthood. Amidst the many lessons, many will receive a piggy bank for the first time to learn the value of saving money. Sometimes, over time the value of the money in a piggy bank yields a surprise. Usually around a person’s teenage years, they often open up a checking account for the first time. As part of having a checking account, one has to learn not only to use but to balance a checkbook.

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4 See Ashley Stewart, Couple make deposit on future with 21-year-old piggy bank, OWATONNA PEOPLE’S PRESS (June 8, 2015), http://www.southernminn.com/owatonna_peoples_press/article_ee74ae4e-afa3-5ff-912c-9a8693be8a90.html (discussing the story of a Minnesota couple who saved over two thousand dollars in a piggy bank).

5 See Kelley Holland, Money advice your kids will actually use, CNBC (Jan. 22, 2015), http://www.cnbc.com/id/102342785

Surprisingly, checkbooks are not only issued through Federal Deposit Insurance Corporation “FDIC”-insured banks. They are also often issued through life insurance companies through an account known as a “retained asset account.” With a retained asset account, a beneficiary under a life insurance contract does not receive a draft for the policy proceeds but rather receives a checkbook or draftbook to draw the policy proceeds from a retained asset account. While in the retained asset account, the money in the account typically earns a small percentage of interest, but the insurance company holding the account also earns interest through a spread.

While retained asset accounts have been in existence in the life insurance industry since 1984, in recent years the operation of these accounts has received increased attention. While of flexibility in the timing of how a beneficiary can utilize the policy proceeds is cited as a benefit of the accounts, the accounts do not come without risk. For instance, retained asset accounts do not receive FDIC protection up to $250,000 as an account at a bank would receive. If an insurer

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8 Id.


10 See Advocate Law Group I, supra note 7 (“Although life insurance companies appreciate the benefits of the accounts for beneficiaries, and some see Retained Asset Accounts as a way to maintain a relationship with a new generation, most insurance companies began paying death claims through Retained Asset Accounts to earn “spread” – a profit between the “short term rate” that is paid by banks and money market funds and the typically higher interest rates life insurers earn from their long term bond and mortgage investments. Depending on prevailing interest rates, “spread” will typically range from 1% to 3% of the money on deposit in the Retained Asset Accounts. Even after the insurance company pays all the expenses of providing beneficiaries with the Retained Asset Accounts, the net result can be a decent extra profit”).

11 Id.

12 Id.

13 See Evans, supra note 9.
becomes insolvent, it is possible a beneficiary may not receive the full policy proceeds. In addition, in 2010 a Bloomberg article reported on a case in which a beneficiary’s signature was allegedly forged on checks associated with a retained asset account and the bank contended it had no legal obligation to reimburse the beneficiary as the beneficiary was a non-customer.

These risks have not only received the attention of the media. In a number of states, insurance regulators have called for increased regulation of the accounts and several states have enacted statutes which require certain disclosures be made to beneficiaries concerning the accounts. In addition, a number of lawsuits have been filed concerning the utilization of retained asset accounts and whether their usage contravenes state and/or federal law, particularly ERISA’s fiduciary duties.

At least two other commentators have generally discussed issues concerning retained asset accounts. This article contributes to the insurance law literature in that it provides a comprehensive overview examining all 50 states’ regulation of retained asset accounts, discusses reported cases to date involving the utilization of retained asset accounts, and proposes several


17 See infra Table 5 (Appendix).

18 See Jaclyn Wille, High Court Declines to Review Challenge to Insurer’s Use of Retained Asset Accounts, BLOOMBERG BNA (May 20, 2014), http://www.bna.com/high-court-declines-n17179890611/

recommendations to further protect consumers and increase transparency with retained asset accounts.

Part I of this article generally provides a background of how life insurance operates as well as discusses an overview of retained asset accounts. Part II provides an overview of the regulation of retained asset accounts at the state level, including through statutory provisions as well as through state Departments of Insurance. In Part III, we discuss reported cases where policyholders have sued insurers concerning the operation of retained asset accounts. Throughout the past decade, most cases have ended up unsuccessfully challenging insurer utilization of retained asset accounts.

Given that a majority of the reported cases to date have unsuccessfully challenged insurer utilization of retained asset accounts, in Part IV we encourage states to adopt several reforms in their statutes which can make the utilization of retained asset accounts more consumer-friendly. These reforms include:

1) Default v. Non-Default: Make it a requirement that a retained asset account only be utilized if a beneficiary actually elects affirmatively to utilize the option;

2) “Clear and Conspicuous” Disclosures: Similar to the requirements of the Truth-in-Lending Act, require “clear and conspicuous” disclosure by an insurer to a beneficiary that a retained asset account does not receive FDIC protection and that an insurance guaranty association may only provide limited recovery of policy proceeds if an insurer becomes insolvent. In addition, these reforms should require each insurer to disclose their A.M. Best insurer credit rating in a “clear and conspicuous” manner. Finally, there are a number of other disclosures which some states have implemented which can be adopted by jurisdictions.
In conclusion, we contend that these reforms not only provide consumers with greater protections concerning the often-misunderstood world of retained asset accounts, but they also help restore retained asset accounts to one of their original intentions “to preserve beneficiaries’ choices until the beneficiary felt he or she was in a position to make a longer-term financial decision on how to handle or invest the money.”

I. Background of Life Insurance and Retained Asset Accounts

A. Background of Life Insurance

The development of life insurance began in the early 19th century during a movement to rationalize the management of death. Life insurance can be defined as a contract where, for a specified compensation (the premium), one party (the insurance company or “insurer”) agrees to pay a specified amount (often the face amount of the policy) to a designated person(s) (beneficiaries) upon the death of another (the insured). In other words, life insurance is intended to compensate specified individuals for the premature death of another. Since its early beginning, life insurance in the United States has grown to an impressive industry with 850 life

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22 See SOLOMON STEPHEN HUEBNER, LIFE INSURANCE: A TEXTBOOK 3 (1921) (“From the standpoint of the individual, however, life insurance may be defined as consisting of a contract, whereby for a stipulated compensation, called the premium, one party (the insurer) agrees to pay the other (the insured), or his beneficiary, a fixed sum upon the happening of death or some other specified event”).
insurance companies,\textsuperscript{23} nearly $19.7 trillion in in-force life insurance,\textsuperscript{24} and direct premium receipts exceeding $143 million in 2013.\textsuperscript{25}

Upon the death of the insured, most life insurance policies allow the beneficiary(s) to select from a number of settlement options for the death benefit of the policy.\textsuperscript{26} Although these settlement options may vary among insurers, the most prevalent options available include 1) lump sum (cash), 2) interest option, 3) fixed-period option, 4) fixed-amount option, and 5) life income options.\textsuperscript{27} When the beneficiary selects the lump sum option, the proceeds of the life insurance policy are fully paid in one payment.\textsuperscript{28} When the interest option is selected, the insurance company retains the proceeds of the life insurance policy and pays out the interest to the beneficiary(s) at specified intervals (i.e. monthly, quarterly, semi-annually, or annually).\textsuperscript{29} When the beneficiary selects the fixed-period option, they are asking the insurance company to pay out the proceeds and any accrued interest over a specified length of time (i.e. quarterly over the next ten years).\textsuperscript{30} With this


The 850 life insurers are made up of 648 stock insurers, 113 mutual insurers, 82 fraternals, and 7 others. The in-force value is the sum of the death proceeds on active policies. In-force life insurance includes $11.37 trillion of individual life insurance, $8.21 trillion of credit life insurance, and $.08 trillion of group life insurance.

\textsuperscript{24} Id. at 63.

\textsuperscript{25} Id. at 92.


\textsuperscript{27} See GEORGE E. REJDA & MICHAEL MCNAMARA, PRINCIPLES OF RISK MANAGEMENT AND INSURANCE: 12TH EDITION 242-243 (2014).

\textsuperscript{28} Id. at 242.

\textsuperscript{29} Id.

\textsuperscript{30} Id.
option, the timeframe is known but the amount of each payment will depend on the interest applied to the account, which may vary over time. With the fixed amount option, the insurance company will pay out the amount specified by the beneficiary(s) until all proceeds and the accrued interest are depleted. In this case, the length of time necessary to pay out the proceeds is unknown and will depend on the amount of interest, which will vary. However, the amount of each payment is known as it is selected by the beneficiary(s). Finally, there are several income options which provide a guaranteed payment for the life of the beneficiary. These options may provide additional guarantees (i.e. a specified number of payments will be made regardless of the length of the life of the beneficiary). Once a life-income option is selected, a new contract is issued and the beneficiary and insurance company are bound to the contract – essentially removing the beneficiary’s right to select any other option in the future. Even with all of the options already available, a new settlement option was created – the retained asset accounts.

**B. Background of Retained Asset Accounts**

In 1984, Metropolitan Life introduced the retained asset account, an entirely new settlement option for life insurance proceeds. Insurers began to offer these accounts in response

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31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.* at 243.

36 *Id.*

to the perceived demand for a settlement option that would earn beneficiaries interest on the account and at the same time would allow for deferral of significant financial decisions at a difficult time (the loss of a loved one). With a retained asset account, an insurer keeps the life insurance policy proceeds in its general account while paying interest to the beneficiaries on the proceeds while retained. The beneficiary(ies) are issued a “checkbook” in which they can write a draft against either part or all of the account at any time. Significantly, as noted earlier, retained asset accounts are not FDIC insured.

Not all life insurers offer retained asset accounts. For the period 2010 to 2014, approximately 21 percent of insurers offered retained asset accounts. Two scholars have investigated the types of insurers that offer retained asset accounts. They found that more financially stable insurers (as measured by the A.M. Best rating, the standard deviation of return on assets, and the premium to surplus ratio) are more likely to offer retained asset accounts. They also found that insurers that write larger average face value policies are more likely to offer retained asset accounts. In addition, larger insurers (as measured by the log of assets) and insurers

38 See Gerry H. Goldsholle & Kimberly C. Price, Creating a Successful Retained Assets Program, 96 BEST’S REVIEW 62 (1996); see also Bisco & McCullough I, supra note 14 at 10.


41 See Evans, supra note 9.

42 See infra Table 1 (Appendix). This table indicates the number of insurers that offered retained asset accounts each year under review. See also Bisco & McCullough, supra note 14 at 47.

43 See generally Bisco & McCullough I, supra note 14.

44 Id. at 7.

45 Id. at 26.
that are a member of an insurer group are more likely to offer retained asset accounts.46 By the end of 2014, there were just over 880,000 retained asset accounts open with a total value of assets around $32 billion.47 The average amount held in an individual retained asset account in 2014 was $34,870.48

In some states, retained asset accounts are required to be an optional settlement option and must be affirmatively selected by the beneficiary, but in others, it is the default option.49 Interest rates paid on retained asset accounts also vary widely, from a low .01 percent to 6 percent.50 Due to a spread between the earnings made by insurers on the invested retained assets and the interest rate paid to the beneficiary, life insurers in the United States are earning an estimated $100 million in annual earnings from retained asset accounts.51

While retained asset accounts are not FDIC insured, to a certain extent they are covered through the limits of state guaranty associations.52 However, the limit of protection through guaranty associations is only $300,000 total in death benefits per insured in most states.53 With this limitation, it is possible for a beneficiary to lose a significant amount of funds in the retained

46 Id. at 7.

47 Id.

48 Id.

49 See infra Table 2 (Appendix); see also Bisco & McCullough I, supra note 14 at 12.

50 See infra Table 3 (Appendix).

51 See Goldsholle & Price, supra note 38. See also Bisco & McCullough I, supra note 14 at 13.

52 See Evans, supra note 9; see National Association of Life and Health Insurance Guaranty Associations, supra note 40. See also Bisco & McCullough I, supra note 14 at 13.

asset account in the event of an insurer insolvency. And this potential risk is not hypothetical – insolvencies have posed a risk to retained asset accounts, such as the Thunor Trust Insolvencies during the late 1990s.\textsuperscript{54} To address this significant risk, we contend, following the lead of other scholars, that disclosures should be present so that the beneficiary/owner is not confused or deceived about how such accounts work.\textsuperscript{55}

II. Current State Regulation of Retained Asset Accounts

Today, the insurance industry is regulated on a state level. The McCarron-Ferguson Act of 1945 states “that the continued regulation and taxation by the several States of the business of insurance is in the public interest.”\textsuperscript{56} With each state regulating the insurance industry within its borders, the laws, regulations, and bulletins pertaining to retained asset accounts can vary by state.

Prior to the recent controversies regarding the use of retained asset accounts, there were only a handful of states which addressed the use of retained asset accounts either through statutes, bulletins, or orders from the Department of Insurance. For instance, the Arkansas Insurance Department issued Bulletin 26-91 on October 31, 1991\textsuperscript{57} (amended by Bulletin 26A-91)\textsuperscript{58} which became effective on January 1, 1992. In combination, these bulletins stated that the utilization of

\textsuperscript{54} E-Mail from Sean McKenna, Director of Communications, National Organization of Life and Health Insurance Guaranty Associations, to author Jill M. Bisco (Oct. 3, 2013) (on file with author Jill M. Bisco); see Bisco & McCullough I, supra note 14 at 13-14.

\textsuperscript{55} See generally infra Part IV; see also Hylton, supra note 19 & Barrese, supra note 19.


retained asset accounts as a settlement option and how it is utilized by any insurer will be evaluated on a case-by-case basis. They also stated that the eight percent interest required on life proceeds will not necessarily apply to the funds held in retained asset accounts unless the account is unfair or deceptive and there has been a violation of Ark. Code Ann § 23-81-118(b)(1).

In Nevada on December 22, 1994, Bulletin 94-005 was issued to address the use of retained asset accounts. This bulletin indicated that an insurer must provide the beneficiary with 1) a written document detailing all of the settlement options available; 2) a supplemental contract which discloses the beneficiaries’ rights and the insurer’s obligations; and 3) a disclosure which provides specific details regarding the use of RAAs (i.e. one check can be written for the full amount on deposit; fees charged, if any; minimum interest rate applicable; and that the RAA is not insured by the FDIC).

On December 8, 1995, Bulletin 1995-22 was issued by the Kansas insurance regulators to address the use of retained asset accounts. This bulletin stated that RAAs can be used under certain situations. First, the RAA must be an option that is stated in the contract or added by

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59 See Arkansas Bulletin 26-91, supra note 57; see also Arkansas Bulletin 26A-91, supra note 58.

60 Id.

61 ARK. CODE ANN. § 23-81-118 (2015). The statute states the following:

When proceeds of any individual policy of life insurance, delivered or issued for delivery in this state, or refunds of premiums on any individual policy of life insurance delivered or issued for delivery in this state after July 20, 1979, are not paid within a reasonable period of time after proof of the death of the insured has been furnished to the insurer, the insurer shall pay interest upon the proceeds or refunds of premiums at the rate of eight percent (8%) per year.


63 Id.


65 Id.
endorsement to the policy after it is issued.66 Second, the RAA must be selected by the beneficiary as a choice among the options available.67 Third, if the insurer utilizes retained asset accounts, they must issue a disclosure with specified information such as how the “checkbook” works, whether fees are charged, and frequency of statements.68

North Carolina’s rules, effective since 1996, state that insurers cannot offer retained asset accounts unless they comply with certain requirements.69 First, the insurer must list the retained asset account as a settlement option within the terms of the claim form along with any other options available.70 Second, the insured must actively select the retained asset account (it cannot be the default settlement option)71 and third, the insurer must disclose the rights of the beneficiary and the obligations of the insurer as they pertain to the retained asset account.72

Following the emergence of retained asset accounts in the news in 2010, many states started evaluating the use of retained asset accounts within their state. At least twenty states issued some form of bulletin, law, or rule. Table 5 shows the level of current legislation regarding the use of the RAA in each state.73 It is important to note that there are many states that have chosen not to address the issue of the RAA at all (i.e. Alaska, Indiana, and Missouri).74 Others, such as

66 Id.
67 Id.
68 Id.
73 See infra Table 5 (Appendix).
74 Id.
California, enacted strict legislation which directly impacted the use of retained asset accounts. Specifically, California’s law, which became effective January 1, 2012, prohibits an insurer from making the retained asset the default settlement option unless the insured does not specifically elect another option from the list of options available.\textsuperscript{75}

Virginia also has implemented legislation regarding retained asset accounts. The law, codified at § 38.2-3117.2, which became effective in 2011, provides that the beneficiary must be made aware of all settlement options at the time of the claim.\textsuperscript{76} The insurer must also provide a supplemental contract which details the beneficiary’s rights and the insurer’s obligations.\textsuperscript{77} Finally, the insurer must provide a disclosure which includes specific information regarding the retained asset account.\textsuperscript{78}

Not all proposed legislation pertaining to retained asset accounts passed and became law. In Texas, during the 82\textsuperscript{nd} regular legislative session in 2011, a bill, H.B. 2152, was introduced in the Texas House.\textsuperscript{79} This legislation, if passed, would have required insurers to obtain written

\textsuperscript{75} See CAL. INS. CODE § 10170(f). The statute states the following:

Notwithstanding subdivision (e), all life insurance benefits shall be paid in the form of a lump-sum payment to the beneficiary or by another settlement option that is clearly described in the claim form. If the beneficiary is provided settlement options in addition to a lump-sum payment or a settlement option is selected by the policyholder, the beneficiary shall have the option to choose how benefits are to be paid to the beneficiary. If the beneficiary does not choose one of the available settlement options, a retained-asset account may be the default option only if the claim form provides a prominent disclosure that, in the absence of a choice by the beneficiary, payment of policy benefits shall be made through establishment of a retained-asset account on the beneficiary’s behalf. This disclosure shall be provided in the portion of the claim form where the beneficiary is offered the ability to select his or her choice of payment method and shall be in easy-to-understand language and in bold and at least 12-point font type. In all such cases, whether by beneficiary choice or default, the insurer shall provide to the beneficiary the disclosure provided for in section 10509.937.

\textsuperscript{76} See VA. CODE ANN. § 38.2-3117.2 (2015).

\textsuperscript{77} See VA. CODE ANN. § 38.2-3117.3 (2015).

\textsuperscript{78} See VA. CODE ANN. § 38.2-3117.4 (2015).

\textsuperscript{79} See H.B. No. 2152, 82 Leg. (Tex. 2011).
authorization from the beneficiary to issue a retained asset account, indicating that it could not be used as the default settlement option. In addition to a required disclosure, the legislation also would have required that the funds held in an RAA be disbursed if the account was inactive for 30 days. The bill, however, was left pending in committee on March 29, 2011 and therefore it was never signed into law.

In addition, Wisconsin issued a proposed rule, Ins. 2.08, which would have required life insurers who utilize retained asset accounts to provide a clear disclosure of the rights and obligations of both the beneficiary and the insurer with respect to death benefits and retained asset accounts. The disclosure would include all settlement options available, services provided, and costs associated with the retained asset account, including any tax implications. The proposed rule was never implemented.

The level of action regarding retained asset accounts varies significantly across states. One item that is consistent across many states is the requirement that the insurers issue a disclosure providing specific information regarding the retained asset accounts. This requirement may come from the action of the National Association of Insurance Commissioners (NAIC), which serves as

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80 Id.
81 Id.
82 Id.
84 Id.
85 Id.
86 See generally infra Table 5 (Appendix).
the coordinator of state insurance regulators. 87 When seeking to implement changes to insurance regulation, the NAIC can only make recommendations to the states and it is up to each state to determine to what level to follow such recommendations. 88 The NAIC seeks to make recommendations with a high possibility of implementation across all states in an attempt to bring uniformity among the states. 89 In August 2010, the National Association of Insurance Commissioners (NAIC) issued a Consumer Alert regarding retained asset accounts, including a definition of a retained asset account and they also provided a list of "key questions to ask and issues to understand." 90

On December 16, 2010, the NAIC adopted the Retained Asset Accounts Sample Bulletin. 91 Each state has the right to accept or reject the bulletin at its own discretion. 92 If the bulletin is adopted in a state, it provides disclosure standards regarding the payment of life insurance benefits through a retained asset account. 93 The disclosure is intended to educate the owner on the specifics of the retained asset account, including: 1) proceeds are placed in a checkbook; 2) a single check can be written for all funds; 3) other settlement options available and whether these options are available until all funds are disbursed; 4) a statement of whether the account is a draft or check

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87 See National Association of Insurance Commissioners, About the NAIC (2015), http://www.naic.org/index_about.htm

88 Id.

89 Id.


91 See Michael J. Rothman, Retained Asset Accounts, 21 FORC JOURN. 22 (2010).

92 Id.

account; 5) a detail of account services provided; 6) a description of any fees; 7) frequency of statements; 8) the minimum interest rate to be credited and how the actual interest rate will be determined; 9) interest earned on the account may be taxable; 10) funds are not guaranteed by the Federal Deposit Insurance Corporation (FDIC) but are covered by the State Guaranty Association (and how to learn about limitations of the fund); and 11) an explanation of the insurer's policy regarding inactive retained asset accounts.94

III. Legal Issues – Reported Cases Involving Retained Asset Accounts

As public attention to the utilization of retained asset accounts has increased, legal scrutiny of their utilization has as well. A number of lawsuits have been filed which generally allege that insurer usage of retained asset accounts constitutes a breach of contract and breach of fiduciary duty. In addition, these lawsuits generally also allege that insurer retention of the interest rate spread, which occurs when the funds of a beneficiary are placed in a retained asset account as opposed to payment by a single lump sum draft, also constitutes a breach of fiduciary duty. Most of the cases arise in the context of group life insurance plans which are governed by the Employee Retirement Income Security Act of 1974 (“ERISA”).95 Despite a split in authority, the majority of courts have found that insurer utilization of retained asset accounts does not constitute a breach of contract with life insurance beneficiaries nor do the operation of the accounts violate ERISA or common law fiduciary duties.

94 Id.

95 See Katherine A. McAllister, A Distinction Without a Difference? ERISA Preemption and the Untenable Differential Treatment of Revocation-On-Divorce and Slayer Statutes, 52 B.C. L. REV. 1481, 1484 (2011) (“Congress passed the Employee Retirement Income Security Act (ERISA) in 1974 to protect employees who participate in employee benefit plans by establishing nationally uniform standards for such plans”).
A. Judicial Scrutiny of Retained Asset Accounts – The Mogel and Lucey Cases

The first major reported federal case involving utilization of retained asset accounts in the context of a group life insurance plan resulted in the United States Court of Appeals for the First Circuit finding that the usage of retained asset accounts were subject to ERISA.96 In Mogel v. UNUM Life Insurance Company of America, the United States Court of Appeals for the First Circuit also found that a class of life insurance beneficiaries stated a viable claim for breach of fiduciary duties under ERISA and overturned a lower court dismissal of the class action.97

A number of the cases challenging retained asset accounts involve claims that insurer usage of retained asset accounts are in contravention of ERISA obligations. In general, ERISA imposes fiduciary duties upon employee benefits plan administrators who exercise discretionary control and/or authority concerning the management, disposition and administration of plan assets.98 Two ERISA fiduciary duties in particular may apply to retained asset accounts. The first provision, 29 U.S.C. § 1104(a)(1) (“exclusive purpose requirement”), places a requirement that an ERISA fiduciary must conduct duties “solely in the interest of the participants and beneficiaries” with respect to the benefits plan.99 The second duty requires an ERISA fiduciary

96 See Mogel v. UNUM Life Ins. Co. of America, 547 F.3d 23, 24 (1st Cir. 2008).
97 Id. at 27.
98 29 U.S.C. § 1002(21)(A) (2015). The statute outlines the following duties:

Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

to refrain from dealing with plan assets in one’s “own interest” and generally in self-interested transactions (“prohibition against self-dealing”).\(^\text{100}\)

The United States Court of Appeals for the First Circuit addressed both of the foregoing ERISA fiduciary duties in the *Mogel* case.\(^\text{101}\) In the *Mogel* case, the group life insurance policies at issue in the case stated that “all benefits payable … will be paid as soon as the Insurance Company receives proof of claim acceptable to it” and also that “[u]nless otherwise elected, payment for loss of life will be made in one lump sum.”\(^\text{102}\) The plaintiffs in the case alleged that the insurer violated both the ERISA fiduciary duties outlined by 29 U.S.C. § 1104(a)(1) as well as 29 U.S.C. § 1106(b) in its usage of a “Security Account” as a retained asset account.\(^\text{103}\)

The insurer in *Mogel* contended it discharged its fiduciary duties when it established the retained asset accounts for the beneficiaries and mailed the checkbooks to them.\(^\text{104}\) However, the *Mogel* court found that the utilization of a retained asset account did not constitute a “lump sum

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\(^{100}\) 29 U.S.C. § 1106(b) (2015). The statute states the following:

(b) Transactions between plan and fiduciary

A fiduciary with respect to a plan shall not –

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

\(^{101}\) See *Mogel*, 547 F.3d at 25.

\(^{102}\) *Id*.

\(^{103}\) *Id*.

\(^{104}\) *Id*. at 26.
payment” under the policies at issue. More significantly, the Mogel court found the insurer’s duties were subject to ERISA’s fiduciary obligations, and thus the plaintiffs stated a viable cause of action under a breach of ERISA’s fiduciary duties.

The Mogel decision was groundbreaking in that it opened the door for ERISA challenges to the utilization of retained asset accounts. Class actions in a number of other cases followed. In the Lucey case, a case filed with the United States District Court of Massachusetts, beneficiaries of group life insurance policies issued under the Servicemembers Group Life Insurance Act filed a lawsuit alleging violations of the Act as well as other violations concerning an insurer’s usage of a retained asset account for policy settlement. Under the Servicemembers Group Life Insurance Act, the member can elect settlement either through a lump sum payment or thirty-six equal monthly installments. Just like the plaintiffs in the Mogel case, the plaintiffs in the Lucey case contended that the delivery of a checkbook for an “Alliance Account” (the type of retained

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105 Id. (“[The insurer’s] theory that its mailing of the checkbooks to the beneficiaries and their acceptance formed a unilateral contract is unpersuasive, for until the beneficiaries received the lump sum payments to which they were entitled, [the insurer] remained obligated to carry out its fiduciary duty under the plan”).

106 Id. at 27.


The Court discussed the Servicemembers Group Life Insurance Act as follows:

Pursuant to 38 U.S.C. § 1970, the Servicemembers Group Life Insurance Act (the “SGLIA”), active servicemembers, veterans, and Reservists are eligible for life insurance through two federally subsidized life insurance programs – Servicemembers Group Life Insurance (“SGLI”) and Veterans Group Life Insurance (“VGLI”). The statute provides that group contracts will automatically insure servicemembers and their dependents, subject to their right to decline coverage, at a maximum coverage amount that is currently $400,000.

108 Id.

109 See 38 U.S.C. § 1970(d). The statute provides the following:

The member may elect settlement of insurance under this subchapter either in a lump sum or in thirty-six equal monthly installments. If no such election is made by the member the beneficiary or beneficiaries may elect settlement either in a lump sum or in thirty-six equal monthly installments. If the member has elected settlement in a lump sum, the beneficiary or beneficiaries may elect settlement in thirty-six equal installments.
asset account at issue) did not constitute “lump sum” delivery of the policy proceeds.\textsuperscript{110} The insurer filed a motion to dismiss the plaintiffs’ allegations.\textsuperscript{111}

In denying the insurer’s motion to dismiss, the court in \textit{Lucey} found that a payment by checkbook is not the same as a lump-sum payment.\textsuperscript{112} However, the District Court for the District of Massachusetts in \textit{Lucey} specifically noted that its findings concerning the “lump sum” payment issue only related to the motion to dismiss directly before the Court rather than consist of any finding as to liability for breach of contract.\textsuperscript{113} Despite the critique of retained asset accounts in the \textit{Mogel} and \textit{Lucey} cases, other courts which have heard class actions in recent years have generally adopted a majority rule concerning retained asset accounts which hold that insurer utilization of retained asset accounts are not violative of ERISA’s fiduciary duties and do not give rise to liability for state law claims of breach of contract, breach of fiduciary duty, fraud, and unfair and deceptive acts and practices.

\textit{B. The Development of the Majority Rule Concerning Retained Asset Accounts - The Faber, Edmonson and Merrimon Cases and ERISA Issues}

In contrast to the \textit{Mogel} and \textit{Lucey} decisions, other courts have held that the usage of retained asset accounts do not violate fiduciary duties in the ERISA context. In \textit{Faber v. Metropolitan Life Insurance Company}, the United States Court of Appeals for the Second Circuit examined the question of whether an insurer usage of a retained asset account through an employee welfare benefit plan violated the “exclusive purpose” and “prohibition against self-

\textsuperscript{110} See \textit{Lucey}, 783 F.Supp.2d at 212.

\textsuperscript{111} \textit{Id.} at 211.

\textsuperscript{112} \textit{Id.} at 212.

\textsuperscript{113} \textit{Id.}
dealing” portions of ERISA.114 Interestingly, the Court in Faber invited the United States Department of Labor to submit its views on ERISA fiduciary duties.115 The Department of Labor’s view concluded that the categorization of ERISA plan assets are based upon “ordinary notions of property rights” and whether retained assets in retained asset accounts are “plan assets” subject to ERISA turns on whether the benefit plan has an ownership interest in them.116

The Faber court gave deference to the Department of Labor’s view and concluded that assets in a retained asset accounts are not “plan interests” since the benefits plans do not have an ownership interest in the funds.117 Instead of the benefits plan having an ownership interest, the Faber court characterized the retained asset insurer – beneficiary relationship as one similar to a debtor-creditor.118 Thus, the Faber court held neither the “exclusive purpose” nor “prohibition against self-dealing” parts of ERISA applied.119

Approximately two years after the Faber decision, in 2013 the United States Court of Appeals for the Third Circuit examined the utilization of retained asset accounts through a group life insurance plan in Edmonson v. Lincoln National Life Insurance Company.120 The Plaintiff in Edmonson was a beneficiary (a spouse) entitled to $10,000 in life insurance benefits through a group life insurance policy through her husband’s employer.121 The policy did not state the

115 Id. at 102.
116 Id. at 105-106.
117 Id. at 106.
118 Id.
119 Id. at 107.
121 Id. at 411.
plaintiff was to be paid the benefits through a retained asset account.\textsuperscript{122} Three months after the establishment of the retained asset account, the plaintiff withdrew the full amount in the account.\textsuperscript{123} Alleging that the insurer made a greater profit through investing the retained assets than the interest paid to her, the plaintiff argued the insurer violated both the “exclusive purpose” as well as the “prohibition against self-dealing” provisions of ERISA.\textsuperscript{124}

The Third Circuit in \textit{Edmonson} noted in particular that there were no provisions in the group life insurance policy which specifically outlined the establishment of retained asset accounts nor the method in which beneficiaries would be paid, unlike the \textit{Mogel} and \textit{Faber} cases.\textsuperscript{125} As indicated through 29 U.S.C. § 1002(21)(A), an insurer is an ERISA fiduciary when it exercises any discretionary authority over plan administration or management.\textsuperscript{126} The \textit{Edmonson} court held that since the insurer held the discretion and choice of paying the plaintiff with either a retained asset account or some other type of distribution, it exercised actions of “plan administration or management” as well as control over plan assets which would make it subject to ERISA’s fiduciary duties.\textsuperscript{127}

As to the plaintiff’s claims that the insurer violated ERISA’s “exclusive purpose” requirement, the \textit{Edmonson} court noted that the purpose of establishing the retained asset account was to pay the plaintiff benefits.\textsuperscript{128} The plaintiff also contended that the payment by

\begin{itemize}
\item \textsuperscript{122} Id.
\item \textsuperscript{123} Id. at 412.
\item \textsuperscript{124} Id.
\item \textsuperscript{125} Id. at 420.
\item \textsuperscript{126} Id. at 421-422.
\item \textsuperscript{127} Id. at 422-423.
\item \textsuperscript{128} Id. at 423.
\end{itemize}
retained asset account created a potential for the insurer to profit – despite these assertions, the court noted that the “increased potential for profit” was insufficient to constitute a breach of ERISA’s fiduciary duties.129 In addition, the court also remarked that the payment via the retained asset account did not directly cause an injury to plaintiff and that the account “neither guaranteed or commanded that [the insurer] take the later act of investing the assets for its own profit.”130

As for the “prohibition against self-dealing” requirement of ERISA, the plaintiff also argued the insurer violated fiduciary duties when it invested the retained assets.131 The insurer contended, following the reasoning of the Faber court, that its relationship which the beneficiary was more of a creditor-debtor relationship and also that of a customer and its bank.132 The Edmonson court concluded that the insurer discharged its fiduciary responsibilities once it established the retained asset account, and thus did not violate any fiduciary duties when it invested the assets.133

Most recently, in July 2014 the United States Court of Appeals for the First Circuit in Merrimon v. Unum Life Insurance Company of America also examined whether insurer use of a retained asset account violated the “prohibition against self-dealing” and “exclusive purpose” fiduciary requirements of ERISA.134 Examining whether the use of a retained asset account

129 Id.

130 Id. at 424.

131 Id.

132 Id. at 425. (“[The insurer] analogizes its relationship with [the plaintiff] at that time to that of a customer and a bank, as the bank will invest a customer’s deposited assets for its own profit, and pay interest to the customer in an amount less than the profit it earns”).

133 Id. at 426.

violates the “prohibition against self-dealing” provision of ERISA, the *Merrimon* court held that it was the beneficiaries, not the insurers who retained funds in general accounts, who acquired ownership interests over the funds.\(^{135}\) Thus, the court reasoned that unless the contract documents of an insurer provide evidence that a beneficiary’s assets are plan assets, then they are not plan assets subject to ERISA duties.\(^ {136}\)

The *Merrimon* court also examined the “exclusive purpose” requirement of ERISA.\(^ {137}\) The plaintiffs contended that when the insurer set the interest rate credited to retained asset accounts, it acted as a fiduciary under ERISA and that it did not set the rate exclusively for the benefit of the beneficiaries.\(^ {138}\) The court held, following the *Faber* and *Edmonson* decisions, that once the insurer created an interest-bearing retained asset account for the beneficiaries, it discharged its obligations as an ERISA fiduciary.\(^ {139}\) In addition, as to the setting of interest rates by the insurer, the court concluded that the setting of interest rates is related to management of the retained asset accounts and not the management of the benefits plans.\(^ {140}\) Thus, the issue regarding the setting of interest rates was not governed by ERISA but rather through state law.\(^ {141}\)

\(^{135}\) *Id.* at 56.

\(^{136}\) *Id.*

\(^{137}\) *Id.* at 58.

\(^{138}\) *Id.*

\(^{139}\) *Id.* at 59. (“In this instance, each of the plans provides that the insurer will, upon proof of claim, pay the death benefit owed by “mak[ing] available to the beneficiary a retained asset account” (emphasis in original). Each plan describes an RAA as “an interest bearing account established through an intermediary bank.” The insurer followed this protocol precisely: it made available to each plaintiff an interest-bearing RAA established through an intermediary bank, which was credited with the full amount of the death benefit owed. No more was exigible to carry out the terms of the plans. … Once the insurer fulfilled these requirements, its duties as an ERISA fiduciary ceased”).

\(^{140}\) *Id.* at 60.

\(^{141}\) *Id.* at 60. (“When the insurer redeems a death benefit that is due a beneficiary by establishing an RAA, no other or further ERISA-related fiduciary duties attach. Thus, the insurer’s setting of an interest rate for the RAAs does not
Reading the Faber, Edmonson and Merrimon cases together, a majority rule has emerged that insurer utilization of retained asset accounts does not violate the ERISA “exclusive purpose” requirement nor does it violate the “prohibition against self-dealing” requirement. While the majority of appellate decisions have rejected challenges to retained asset accounts on the basis of claims under federal law and ERISA, challenges have also emerged to retained asset accounts through claims based upon state law.

C. State Law Issues

1. Breach of Contract

One of the common types of claims brought against the use of retained asset accounts are claims based upon breach of contract. In Rabin v. MONY Life Insurance Company, the plaintiff alleged that the insurer breached the terms of life insurance policies by utilizing a retained asset account instead of paying proceeds by a check and also failing to award a competitive rate of interest to the retained asset account.142

As to the insurer not paying the proceeds of the life insurance policies by check, the actual contracts themselves authorized the insurer to utilize settlement options other than a single lump sum payment.143 In addition, the Rabin court also noted that the plaintiff retained the ability to liquidate the retained asset account at any time, and thus was not materially different from disbursement by check.144

implicate ERISA; rather, its setting o the interest rate must be viewed as part of the management of the RAAs, governed by state law”).

143 Id. at 39.
144 Id.
The *Rabin* court also rejected the plaintiff’s argument that the insurer breached its contract by failing to pay a competitive rate of interest. The plaintiff alleged that he was only paid 0.75% interest on the retained asset account rather than the 8.3% the insurer paid to non-policyholder creditors. In analyzing this claim, the *Rabin* court noted that the plaintiff was advised of the rate in which the retained asset account accrued interest and he had the ability to withdraw the funds to any other investment he wished at any time.

Breach of contract allegations concerning the utilization of a retained asset account also appeared in *Phillips v. Prudential Insurance Company of America*. In *Phillips*, the beneficiary of a life insurance policy was lead plaintiff on a class action challenging retained asset accounts under Illinois state law. The plaintiff contended that the insurer breached the contractual terms of the life insurance policy at issue by utilizing a retained asset account as the default method of settling her life insurance claim. The insured never elected a payment method of settlement before he died, and the beneficiary left a claim form blank which would have provided the beneficiary the option of settlement other than a retained asset account. Despite the fact that the claim form did not explicitly mention a lump-sum option for the beneficiary, the policy itself included that option and did make reference to selection of “another payment option allowed in

145 *Id.* at 40.

146 *Id.* at 39.

147 *Id.* at 39-40.

148 See *Phillips v. Prudential Ins. Co. of America*, 714 F.3d 1017 (7th Cir. 2013).

149 *Id.* at 1019.

150 *Id.* at 1020.

151 *Id.* at 1021.
the policy.” Under these facts, the United States Court of Appeals for the Seventh Circuit upheld the district court’s dismissal of plaintiff’s breach of contract claim.

2. State Law Issue – Breach of Fiduciary Duty

Another challenge to retained asset accounts is that the usage of the accounts violates general fiduciary duties. There is academic discussion as to whether or not an insurer’s duty to its insureds should be characterized as a fiduciary one in nature, particularly given that some courts have utilized the terms “fiduciary” in describing relationships between an insurer and an insured. In the Rabin case, the plaintiff also proffered a breach of fiduciary duty claim. The Rabin court noted that under New York law insurers typically do not owe policyholders a fiduciary duty under the common law unless it is a situation where the insurer is defending its insured on a liability claim. The court also remarked that the plaintiff produced no evidence

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152 Id. at 1022.

153 Id. at 1023.


155 See e.g., Faye v. State Farm Mut. Auto. Ins. Co., 98 Wash. App. 487, 492 (Wash. Ct. App. 1999) (“A fiduciary or quasi-fiduciary relationship exists between an insurer and its insured. An insurer has an enhanced fiduciary obligation that rises to a level higher than that of mere honesty and lawfulness of purpose. It requires an insurer to deal fairly with an insured giving equal consideration in all matters to the insured’s interests as well as its own.”); Pareti v. Sentry Indemnity Co., 536 So.2d 417, 423 (La. 1988) (“Instead, the protection afforded to insureds against this contingency is that in every case, the insurance company is held to a high fiduciary duty to discharge its policy obligations to its insured in good faith – including the duty to defend the insured against covered claims and to consider the interests of the insured in every settlement.”).

156 See Rabin, 387 Fed. Appx. at 42.

157 Id.
that the insurer exercised any investment decision-making on the plaintiff’s behalf, thus the beneficiary’s relationship to the insurer was not fiduciary in nature.\footnote{\textit{Id.}}

Interestingly, the \textit{Rabin} court also analyzed a New York law which imposes a fiduciary duty upon insurance agents and brokers for funds collected from insureds.\footnote{\textit{Id.} at 43.} The law states:

\begin{quote}
Every insurance agent, title insurance agent, and insurance broker acting as such in this state shall be responsible in a fiduciary capacity for all funds received or collected as insurance agent or insurance broker, and shall not, without the express consent of his, her or its principal, mingle any such funds with his, her or its own funds held by him, her or it in any other capacity.\footnote{N.Y. Ins. § 2120 (2014).}
\end{quote}

The court noted that while the statute applies to insurance agents and brokers, nothing in the statute or other authority extends the fiduciary duty concerning funds to insurers.\footnote{\textit{See Rabin}, 387 Fed. Appx. at 43.}

The United States Court of Appeals for the Seventh Circuit in the \textit{Phillips} case also examined a claim based upon an alleged breach of fiduciary duty.\footnote{\textit{See Phillips}, 714 F.3d at 1024.} In \textit{Phillips}, the plaintiff contended that when the insurer became the investment manager for the retained asset account, a fiduciary relationship arose.\footnote{\textit{Id.}} The \textit{Phillips} court rejected this argument, noting that the insurer did not invest any life insurance proceeds for the beneficiary’s benefit and thus no fiduciary relationship existed.\footnote{\textit{Id.}}

\footnotesize
\begin{enumerate}
\item\footnote{\textit{Id.}}
\item\footnote{\textit{Id.} at 43.}
\item\footnote{N.Y. Ins. § 2120 (2014).}
\item\footnote{\textit{See Rabin}, 387 Fed. Appx. at 43.}
\item\footnote{\textit{See Phillips}, 714 F. 3d at 1024.}
\item\footnote{\textit{Id.}}
\item\footnote{\textit{Id.}}
\end{enumerate}

Retained asset accounts are also potentially subject to claims for deceptive acts or practices. The United States Court of Appeals for the Second Circuit in *Rabin* addressed claims that the insurer allegedly committed deceptive acts or practices surrounding the utilization of retained asset accounts.\(^{165}\) Under New York law, “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in the state are unlawful.\(^{166}\) The plaintiff alleged that a number of representations were deceptive, including that the insurer’s representation that policy proceeds were to “be placed in an interest bearing checking account” led to the belief that instead of the insurer retaining the funds in their own general account, the funds would be deposited in a separate account.\(^{167}\) Analyzing the deceptive acts or practices claim, the *Rabin* court emphasized that the insurer provided a confirmation certificate and brochure that the plaintiff could withdraw the funds from the retained asset account at any time.\(^{168}\) In addition, the *Rabin* court also noted that the plaintiff cited no authority that required the insurer to physically segregate beneficiary funds.\(^{169}\) Thus, the court affirmed the district court’s granting of summary judgment dismissing the deceptive acts or practices claim.\(^{170}\)

IV. Recommendations and Proposals for State Statutes

\(^{165}\) See *Rabin*, 387 Fed. Appx. at 41.


\(^{167}\) See *Rabin*, 387 Fed. Appx. at 41.

\(^{168}\) Id.

\(^{169}\) Id.

\(^{170}\) Id. at 42.
As court decisions involving retained asset accounts indicate, challenges to these accounts currently face an uphill climb whether the challenges are based on federal claims of breach of ERISA fiduciary duties or state law claims. With the courts essentially deferring with the larger policy issues concerning retained asset accounts to the states, it is up to policymakers at the state level to adopt reforms in statutes which can make the utilization of retained asset accounts more consumer-friendly. The reforms can begin with the issue of whether a retained asset account can be utilized as a default method of life insurance policy settlement.

1) Default v. Non-Default: Many beneficiaries may be surprised that a retained asset account is utilized for life insurance policy settlement. For example, in the Phillips case, the insurer utilized a retained asset account as a default method of paying a life insurance claim.\(^\text{171}\) Many insurers use the retained asset account as a default method of settlement rather than a simple lump-sum payment, creating a situation where the beneficiary has to electively choose not to utilize a retained asset account rather than to positively request a retained asset account.

Today, 37 out of 50 states allow an insurer to use a retained asset account as a default method of settlement. The first reform policymakers at the state level can implement is to provide the default for settlement to be a lump sum payment. Such a reform not only is insured/beneficiary/consumer-friendly but would likely eliminate most litigation concerning insurer utilization of retained asset accounts.

2) “Clear and Conspicuous” Disclosures: At least two other commentators have lauded the concept of improving disclosures concerning retained asset accounts to beneficiaries.\(^\text{172}\) Michael Barrese and Maria O’Brien Hylton have both focused on the issue where representations

\(^{171}\) See Phillips, 714 F.3d at 1024.

\(^{172}\) See Hylton, supra note 19; see also Barrese, supra note 19.
made to beneficiaries by insurers relating to the nature of the accounts may allegedly be deceptive.\footnote{See Hylton, supra note 19 at 93; see also Barrese, supra note 19 at 550.} One critique is the representation that retained asset accounts are described as “money market” accounts and creating the impression the accounts have the same protections afforded to money market accounts.\footnote{See Barrese, supra note 19 at 550.} Hylton also has argued that disclosure be provided in three other areas: first, that retained asset accounts are not individual accounts; second, the assets in the retained asset accounts are not FDIC insured; and third, that the insurer makes a profit on the retained assets.\footnote{See Hylton, supra note 19 at 92-93.}

The proposals for disclosure suggested by Barrese and Hylton are all positive and necessary steps. Incorporating these suggestions and analyzing state statutes and regulations currently in effect, we propose that states implement “clear and conspicuous” disclosures in the following areas. One model for financial disclosure is found in the requirements of the Truth in Lending Act.\footnote{See Truth in Lending Act, Pub. L. No. 90-321, 82 Stat. 146 (1968).} The Truth in Lending Act requires certain credit transactions to include disclosures that are “clearly and conspicuously” presented by the creditor to the borrower.\footnote{See 12 C.F.R. § 226.5(a)(1)(i) (2011).}

We recommend states to make “clear and conspicuous” disclosures in the following areas:

\textit{A). A beneficiary’s right to seek outside professional counsel.}

Only eight states currently have statutes or regulations which encourage beneficiaries to obtain outside professional advice to consult on the tax and investment considerations of
utilizing a retained asset account. One state that does have such a statute is Kentucky, which requires a disclosure of “The recommendation to consult a tax, investment, or other financial advisor regarding tax liability and investment options.”\textsuperscript{178}

\textit{B). A beneficiary’s right to be clearly informed that the retained asset account may not be FDIC insured.}

This is one of Hylton’s main concerns\textsuperscript{179} as well as a common concern that has arisen concerning retained asset accounts. Currently sixteen states require that insurers disclose that a retained asset account is not insured by the FDIC. For instance, California’s statute states that “Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (FDIC), but are guaranteed by State Guaranty Associations, and that the State Guaranty Association coverage limits vary by state.”\textsuperscript{180}

\textit{C). A beneficiary’s right to be informed of information concerning state guaranty fund limits.}

In addition to many states requiring disclosure that retained asset accounts are not FDIC insured, some states require a notice to the beneficiary that more information on state guaranty funds can be found through the National Organization of Life and Health Insurance Guaranty Associations. Currently ten states mandate this disclosure. For example, the Illinois Department of Insurance regulations state “The insurer must advise the beneficiary 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.”\textsuperscript{181}

\textsuperscript{179} See Hylton, supra note 19 at 92-93.
\textsuperscript{180} See CAL. INS. CODE § 10509.937(j) (2015).
D). A beneficiary’s right to be informed that an insurer may earn income on the retained assets in excess of the interest paid to the beneficiary on the account.

The spread that the insurer earns on the retained assets is also one of the concerns highlighted by Hylton.\(^\text{182}\) Despite the concerns relating to insurer profit on the retained assets, only five states (Kentucky, Louisiana, Maryland, New York and Rhode Island) require disclosure of this aspect to the beneficiary. For example, Louisiana’s Department of Insurance regulations require the following disclosure: “The income that may be derived by the insurer or a related party, in addition to any fees charged on the retained asset account, from the total gains received on the investment of the balance of funds in the retained asset account.”\(^\text{183}\)

E). A beneficiary’s right to be informed of how interest rates on the retained asset account are determined and how they may change.

Twenty-one states currently mandate insurers to disclose the determination of interest rates on the retained asset account and how the rates may change. For instance, Maryland’s statute on retained asset accounts require disclosure of “the method used to determine interest rates applied to the retained asset account, when and how interest rates may change, and any dividends and other gains that may be paid or distributed to the account holder.”\(^\text{184}\)

F). A beneficiary’s right to be informed as to the insurer policies in the event an account becomes inactive.

A potential risk that is incurred with the utilization of retained asset accounts is the risk of an account becoming inactive and becoming subject to a state’s unclaimed property laws. State

\(^{182}\) See Hylton, \textit{supra} note 19 at 93.


unclaimed property laws permit the state to be the custodian of unclaimed property until the owner claims it.\textsuperscript{185} As of this date, approximately twelve states require disclosure with regard to what happens with a retained asset account in the event it becomes inactive. For example, California’s statute requires disclosure with regard to the following: “A description of the insurer’s policy regarding retained asset accounts that become inactive, including the policy with respect to inactive accounts that are at risk of escheating to the state pursuant to the California Unclaimed Property Law ….”\textsuperscript{186}

G). A beneficiary’s right to be informed that payment of the total proceeds occurs with delivery of a “checkbook kit” or “draftbook kit.”

Approximately twenty-one states require the disclosure that payment of the total proceeds with a retained asset account is accomplished with the insurer’s delivery of a “checkbook kit” or “draftbook kit.” For instance, North Carolina’s regulation mandates disclosure “That payment of the total proceeds is accomplished by delivery of a “checkbook kit” or “draft kit” to the beneficiary.”\textsuperscript{187}

H). A beneficiary’s right to be informed that access to the entire proceeds in the account can be obtained through a single check, draft or other instrument.

\textsuperscript{185} See Ethan D. Miller & John L. Coalson, Jr., The Pot of Gold at the End of the Class Action Lawsuit: Can States Claim it as Unclaimed Property?, 70 U. Pitt. L. Rev. 511, 516-517 (2009) (“The principal objective of state unclaimed property laws is to assist owners in reclaiming their missing property. The state thus acts as an intermediary between the holder, which is in possession of the unclaimed property, and the owner. After the holder reports and remits the property to the state, the state is obligated to attempt to contact the owner and return the property to him. If the state is unsuccessful in finding the owner, the state must hold the property on the owner’s behalf until the owner comes to collect it. Accordingly, state unclaimed property laws are primarily designed as procedural mechanisms that facilitate the return of unclaimed property to its owner”).

\textsuperscript{186} See CAL. INS. CODE § 10509.937(l) (2015).

Twenty-two states currently require the disclosure that a beneficiary can access the entire proceeds of a retained asset account through a single check, draft or other instrument. One such state is Rhode Island, which requires disclosure that “The entire proceeds are available to the account holder by the use of one such check, draft, or other instrument.”\(^{188}\)

\(I).\) A beneficiary’s right to be informed as to whether the retained asset account is a checking account or draft account.

Eighteen states require that an insurer inform a beneficiary as to whether a retained asset account is a checking account or a draft account. For example, Virginia’s statute requires the inclusion of “A statement identifying the account as either a checking account or a draft account and an explanation of how the account works.”\(^{189}\)

\(J).\) A beneficiary’s right to be informed as to the preservation of settlement options in the event the balance drops below the minimum requirements of an insurer or if the entire balance is withdrawn.

Currently sixteen states require disclosure concerning preservation of settlement options. For instance, California’s statute mandates disclosure as to “Whether the available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.”\(^{190}\)

\(K).\) A beneficiary’s right to notice that interest earned on the retained asset account may be taxable.


\(^{189}\) See VA. CODE ANN. § 38.2-3117.4(4) (2015).

\(^{190}\) See CAL. INS. CODE § 10509.937(c) (2015).
Twenty-one states currently require a notice that interest earned on a retained asset account may be taxable. A typical regulation is that of the state of Colorado, which requires “Notice that the interest earned on the account may be taxable.”

L). A beneficiary’s right to disclosure of any applicable fees on the retained asset account.

Twenty-two states mandate disclosure of any applicable fees on a retained asset account. For example, Iowa’s regulation requires “A description of fees charged, if applicable.”

M). A beneficiary’s right to notification of account statement frequency.

Twenty-one states currently require this disclosure. One such state that requires disclosure regarding the frequency of account statements is Nebraska, which mandates disclosure of “The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity.”

N). A beneficiary’s right to notice of A.M. Best insurer rating of insurer which utilizes retained asset account.

Currently no states require disclosure of an insurer’s A.M. Best rating with the disclosures relating to retained asset accounts. As discussed earlier, insolvency may be a risk or an insurer in certain situations. The state of Kansas requires a disclosure to a beneficiary “that a lengthy delay is possible before a beneficiary can get the proceeds if insolvency occurs.” A.M.

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193 See Nebraska Department of Insurance, CB-125 (Mar. 18, 2011).

Best is the most reputable rating of insurer strength.195 A disclosure that should be made to a beneficiary is the A.M. Best rating of an insurer they have a retained asset account with.

**Conclusion**

As the reported cases to date concerning retained asset accounts illustrate, the majority of courts thus far have upheld the utilization of retained asset accounts and have also generally found that their usage does not violate fiduciary duties. While future decisions of the courts may provide greater clarification concerning fiduciary duties, state legislatures are now in a position to enact meaningful legislation to help beneficiaries fully understand the sometimes complicated implications of retained asset accounts. A number of states have already enacted legislation. It is now up to all the states to take a close look at their laws in the area and do what is best for all consumers.

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195 See Douglas R. Richmond, *Reinsurance Intermediaries: Law and Litigation*, 29 U. HAW. L. REV. 59, 88 (2006) (“A.M. Best is the most notable rating organization. A.M. Best rates insurance companies’ financial strength as A++ and A+ (Superior), A and A– (Excellent), B++ and B+ (Very Good), B and B– (Fair), C++ and C+ (Marginal), C and C– (Weak), D (Poor), E (Under Regulatory Supervision) and F (In Liquidation).”).
Table 1 (Appendix): Summary of Retained Asset Accounts (as of year-end)\textsuperscript{196}

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
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<tr>
<td>No. of Insurers</td>
<td>800</td>
<td>789</td>
<td>738</td>
<td>746</td>
<td>730</td>
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<tr>
<td>No. of Insurers with RAA</td>
<td>161</td>
<td>167</td>
<td>162</td>
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<tr>
<td>Percentage with RAA</td>
<td>20.13%</td>
<td>21.17%</td>
<td>21.95%</td>
<td>21.72%</td>
<td>21.78%</td>
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<tr>
<td>Total Number of Open Accounts</td>
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<td>1,045,749</td>
<td>1,004,838</td>
<td>957,073</td>
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<tr>
<td>Total Value in Accounts</td>
<td>32,153,286,598</td>
<td>32,014,755,674</td>
<td>31,729,846,956</td>
<td>31,984,925,763</td>
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<tr>
<td>Avg $ per Acct</td>
<td>29,651.15</td>
<td>30,614.19</td>
<td>31,577.08</td>
<td>33,419.53</td>
<td>34,869.66</td>
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\textsuperscript{196} This table originally appears in Bisco & McCullough I, \textit{supra} note 14 at 47.
Table 2 (Appendix): States Permitting the Retained Asset Account to be the Default Settlement Option\textsuperscript{197}

<table>
<thead>
<tr>
<th>State</th>
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<tr>
<td>Florida</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
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<td>Yes</td>
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<td>Yes</td>
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<td>Maryland\textsuperscript{1}</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Montana</td>
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<tr>
<td>New Jersey</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Each state’s Department of Insurance was contacted directly to determine whether the retained asset account was permitted to be the default settlement option for each year under review. In order for a state to be marked “Yes” they must have permitted the use of retained asset accounts as the default settlement option for life insurance for the entire year.

\textsuperscript{1} Maryland stopped permitting the retained asset account from being the default settlement option on July 1, 2010.

Table 2 (Appendix): States Permitting the Retained Asset Account to be the Default Settlement Option (Continued)

<table>
<thead>
<tr>
<th>State</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Mexico</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Nevada</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>New York</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Ohio</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Oregon</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Pennsylvania</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Rhode Island</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>South Carolina</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>South Dakota</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Tennessee</td>
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<tr>
<td>Texas</td>
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</tr>
<tr>
<td>Utah</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Virginia</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Vermont</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Washington</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>West Virginia</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Each state’s Department of Insurance was contacted directly to determine whether the retained asset account was permitted to be the default settlement option for each year under review. In order for a state to be marked “Yes” they must have permitted the use of retained asset accounts as the default settlement option for life insurance for the entire year.
Table 3 (Appendix): Interest Rate Credited to Retained Asset Accounts\textsuperscript{198}

<table>
<thead>
<tr>
<th>Average Interest Rates</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Obs</td>
<td>152</td>
<td>160</td>
<td>154</td>
<td>147</td>
<td>137</td>
</tr>
<tr>
<td>High Interest</td>
<td>4.00%</td>
<td>4.00%</td>
<td>4.00%</td>
<td>4.00%</td>
<td>6.00%</td>
</tr>
<tr>
<td>Low Interest</td>
<td>0.07%</td>
<td>0.06%</td>
<td>0.05%</td>
<td>0.05%</td>
<td>0.01%</td>
</tr>
<tr>
<td>Std Dev.</td>
<td>1.05</td>
<td>0.99</td>
<td>1.01</td>
<td>1.03</td>
<td>1.03</td>
</tr>
<tr>
<td>Avg Interest</td>
<td>1.53%</td>
<td>1.39%</td>
<td>1.31%</td>
<td>1.26%</td>
<td>1.22%</td>
</tr>
</tbody>
</table>

\textsuperscript{198} This table originally appears in Bisco & McCullough I, supra note 14 at 55.
Table 4 (Appendix): Life Insurance Guaranty Fund Programs\textsuperscript{199}

<table>
<thead>
<tr>
<th>State</th>
<th>Effective Date</th>
<th>Maximum Coverage - Per Insured Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>1/1/1983</td>
<td>$300,000</td>
</tr>
<tr>
<td>Alaska</td>
<td>5/16/1990</td>
<td>$300,000</td>
</tr>
<tr>
<td>Arizona</td>
<td>8/27/1977</td>
<td>$300,000</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3/9/1989</td>
<td>$300,000</td>
</tr>
<tr>
<td>California</td>
<td>1/1/1991</td>
<td>$300,000 \textsuperscript{2}</td>
</tr>
<tr>
<td>Colorado</td>
<td>6/1/1991</td>
<td>$300,000 \textsuperscript{3}</td>
</tr>
<tr>
<td>Connecticut</td>
<td>10/1/1972</td>
<td>$500,000</td>
</tr>
<tr>
<td>Delaware</td>
<td>4/23/1982</td>
<td>$300,000</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>7/22/1992</td>
<td>$300,000</td>
</tr>
<tr>
<td>Florida</td>
<td>10/1/1979</td>
<td>$300,000</td>
</tr>
<tr>
<td>Georgia</td>
<td>7/1/1981</td>
<td>$300,000</td>
</tr>
<tr>
<td>Hawaii</td>
<td>7/1/1988</td>
<td>$300,000</td>
</tr>
<tr>
<td>Idaho</td>
<td>6/1/1977</td>
<td>$300,000</td>
</tr>
<tr>
<td>Illinois</td>
<td>1/1/1986</td>
<td>$300,000</td>
</tr>
<tr>
<td>Indiana</td>
<td>7/1/1978</td>
<td>$300,000</td>
</tr>
<tr>
<td>Iowa</td>
<td>7/1/1987</td>
<td>$300,000</td>
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<tr>
<td>Kansas</td>
<td>7/1/1982</td>
<td>$300,000</td>
</tr>
<tr>
<td>Kentucky</td>
<td>6/17/1978</td>
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<td>Louisiana</td>
<td>9/30/1991</td>
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<td>Maine</td>
<td>7/25/1984</td>
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<td>Maryland</td>
<td>7/1/1971</td>
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<tr>
<td>Massachusetts</td>
<td>4/3/1986</td>
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<td>5/1/1982</td>
<td>$300,000</td>
</tr>
<tr>
<td>Minnesota</td>
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<td>4/9/1985</td>
<td>$300,000</td>
</tr>
<tr>
<td>Missouri</td>
<td>8/13/1988</td>
<td>$300,000</td>
</tr>
<tr>
<td>Montana</td>
<td>7/1/1974</td>
<td>$300,000</td>
</tr>
<tr>
<td>Nebraska</td>
<td>8/24/1975</td>
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</tr>
<tr>
<td>Nevada</td>
<td>7/1/1973</td>
<td>$300,000</td>
</tr>
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<td>New Hampshire</td>
<td>6/25/1979</td>
<td>$300,000</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1/1/1991</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

\textsuperscript{199} This table originally appears in Bisco & McCullough I, \textit{supra} note 14 at 59-60.
Table 4 (Appendix): Life Insurance Guaranty Fund Programs (continued)

<table>
<thead>
<tr>
<th>State</th>
<th>Effective Date</th>
<th>Maximum Coverage - Per Insured Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Mexico</td>
<td>4/9/1975</td>
<td>$300,000</td>
</tr>
<tr>
<td>New York</td>
<td>8/2/1985</td>
<td>$500,000</td>
</tr>
<tr>
<td>North Carolina</td>
<td>4/13/1974</td>
<td>$300,000</td>
</tr>
<tr>
<td>North Dakota</td>
<td>7/1/1983</td>
<td>$300,000</td>
</tr>
<tr>
<td>Ohio</td>
<td>9/14/1988</td>
<td>$300,000</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>9/1/1981</td>
<td>$300,000</td>
</tr>
<tr>
<td>Oregon</td>
<td>9/13/1975</td>
<td>$300,000</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>1/25/1979</td>
<td>$300,000</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>6/20/1985</td>
<td>$300,000</td>
</tr>
<tr>
<td>South Carolina</td>
<td>7/14/1972</td>
<td>$300,000</td>
</tr>
<tr>
<td>South Dakota</td>
<td>7/1/1989</td>
<td>$300,000</td>
</tr>
<tr>
<td>Tennessee</td>
<td>7/1/1989</td>
<td>$300,000</td>
</tr>
<tr>
<td>Texas</td>
<td>9/27/1973</td>
<td>$300,000</td>
</tr>
<tr>
<td>Utah</td>
<td>7/1/1986</td>
<td>$500,000</td>
</tr>
<tr>
<td>Vermont</td>
<td>4/2/1972</td>
<td>$300,000</td>
</tr>
<tr>
<td>Virginia</td>
<td>7/1/1976</td>
<td>$300,000</td>
</tr>
<tr>
<td>West Virginia</td>
<td>6/21/1977</td>
<td>$300,000</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8/22/1969</td>
<td>$300,000</td>
</tr>
<tr>
<td>Wyoming</td>
<td>7/1/1990</td>
<td>$300,000</td>
</tr>
</tbody>
</table>

1 Life guaranty funds are established on a state by state basis. Each state runs its own program with the exception of Connecticut, District of Columbia, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Virginia. These states formed Guaranty Fund Management Services, a voluntary, non-profit, unincorporated association which manages the funds and handles claim supervisory services for its member states. For more information see: http://www.gfms.org

2 California - Coverage is limited to 80% of face value of the policy to a maximum of $300,000 per insured

3 Colorado - Prior to August 2011, the maximum was $100,000 per insured

Source: The effective date of the state guaranty funds was obtained from Brewer III, Mondschean & Strahan, see supra note 53. The maximum state limit for death benefit coverage under the guaranty fund was obtained from each individual state fund website by the author. A link to these websites is located from the National Organization of Life and Health Guaranty Associations at: http://www.nolhga.com/policyholderinfo/main.cfm
### Table 5 (Appendix): Retained Asset Account Regulation, Bulletins, and Rules

<table>
<thead>
<tr>
<th>State</th>
<th>Statute or Regulation</th>
<th>Details of Statute or Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>N/A.</td>
<td>No statutes or regulations.</td>
</tr>
<tr>
<td>Alaska</td>
<td>Alaska Stat. § 21.96.030 (2015)</td>
<td>“Unless another form of payment is agreed to by the policyholder or beneficiary, an insurance company doing business in this state may not pay a judgment or settlement of a claim in this state for a loss incurred in this state with an instrument other than a negotiable bank check payable on demand and bearing even date with the date of writing or by electronic funds transfer.”</td>
</tr>
<tr>
<td>Arizona</td>
<td>N/A.</td>
<td>No statutes or regulations.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Arkansas Insurance Department Legal Division, Bulletin 26-91 (Oct. 31, 1991); Arkansas Insurance Department Legal Division, Bulletin 26A-91 (Dec. 26, 1991)</td>
<td>Bulletin 26-91 noted that the Insurance Department does not have an objection to retained asset accounts so long as: 1. The beneficiary plays a “meaningful role” in the choice of such option, and , 2. The beneficiary is guaranteed to receive interest at no less than eight percent (8%) per annum.” The bulletin also stated that “The beneficiary will be presumed to have exercised a meaningful role in the election of his or her settlement option by having checked the option desired from a list of the options available prior to signing the proof of loss.” Bulletin 26A-91 relaxed the requirements of Bulletin 26-91. The revised bulletin noted that 8% interest is not required unless the account is “unfair” or “deceptive” and that there has been a violation of Arkansas law which requires that claims payments be “paid” or “settled” within 30 days. The revised bulletin permits the negative option selection of retained asset accounts and the “fairness” of a retained asset account is judged upon the following factors:</td>
</tr>
</tbody>
</table>
“1. Whether the insurer makes it clear in the proof of loss form presented to the death claimant that he (or she) may “override” the automatic checkbook method of settlement and that he or she may do so on the proof of loss form itself;  
2. Whether the insurer poses institutionalized impediments to the conversion of an initially-selected Automatic Benefits Checkbook or Beneficiary Access account to any other sort of settlement option which the insurer may make available; and  
3. Whether the interest earnings made available to the beneficiary are competitive with or comparable to what he (or she) might earn in a demand access passbook savings account in the State of the beneficiary’s resident.”

“All life insurance benefits shall be paid in the form of a lump-sum payment to the beneficiary or by another settlement option that is clearly described in the claim form. If the beneficiary is provided settlement options in addition to a lump-sum payment or a settlement option selected by the policyholder, the beneficiary shall have the option to choose how benefits are to be paid to the beneficiary. If the beneficiary does not choose one of the available settlement options, a retained-asset account may be the default option only if the claim form provides a prominent disclosure that, in the absence of a choice by the beneficiary, payment of policy benefits shall be made through establishment of a retained-asset account on the beneficiary’s behalf. This disclosure shall be provided in the portion of the claim form where the beneficiary is offered the ability to select his or her choice of payment method and shall be in easy-to-understand language and in bold and at least 12-point font type. In all such cases, whether by beneficiary choice or default, the insurer shall provide to the beneficiary the disclosure provided for in Section 10509.937.” |
Cal. Ins. Code § 10509.937 requires insurers to make the following written disclosures:

“(a) Payment of the full benefit is accomplished by delivery of the draft book or checkbook.
(b) One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.
(c) Whether the available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.
(d) A statement identifying the account as either a checking or draft account and an explanation of how the account works, including, but not limited to, any minimum check or draft amount requirements.
(e) Information about the account services provided and contact information where the beneficiary may request and obtain more details about those services.
(f) A description of any fees charged, if applicable.
(g) The frequency of statements showing the current account balance, the interest credited, drafts or checks written, and any other account activity. The insurer shall send the beneficiary at least one statement per quarter, and a statement for any month in which there has been account activity other than just the crediting of interest.
(h) The guaranteed minimum interest rate to be credited to the account, how the actual interest rate will be determined, and the actual interest rate that would be credited to a newly opened account as of the date the disclosure is issued. The actual interest rate may be disclosed by the insurer with the disclosures provided with the claim documents sent to the beneficiary, through a toll-free telephone number established by the insurer, or through the insurer’s Web site.
(i) That the interest earned on the account may be taxable.
(j) Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (FDIC), but are guaranteed by the State Guaranty
Associations, and that the State Guaranty Association coverage limits vary by state. 
(k) A statement that advises the beneficiary to contact the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) to learn more about the coverage limitations applicable to his or her account, and that provides the beneficiary with the current Internet Web site address and telephone number for NOLHGA. 
(l) A description of the insurer’s policy regarding retained asset accounts that become inactive, including the policy with respect to inactive accounts that are at risk of escheating to the state pursuant to the California Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).”

<table>
<thead>
<tr>
<th>Colorado</th>
<th>Colorado Department of Regulatory Agencies Division of Insurance, Bulletin No. B-4.12 (April 29, 2011)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bulletin No. B-4.12 states that “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.”</td>
</tr>
<tr>
<td></td>
<td>If a retained asset account is utilized, a number of written disclosures must be provided by the insurer to the beneficiary. These disclosures are as follows:</td>
</tr>
<tr>
<td></td>
<td>“1. Payment of the full benefit amount is accomplished by delivery of the “draft book” or “check book.”</td>
</tr>
<tr>
<td></td>
<td>2. One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.</td>
</tr>
<tr>
<td></td>
<td>3. Whether other available settlement options are preserved until the entire balance is withdrawn or until the balance drops below the insurer’s minimum balance requirements.</td>
</tr>
<tr>
<td></td>
<td>4. A statement identifying the account as either a checking or draft account and an explanation of how the account works.</td>
</tr>
<tr>
<td></td>
<td>5. Information about the account services provided and contact information where the</td>
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beneficiary may request and obtain more details about such services.
6. A description of the fees charged, if applicable.
7. The frequency of statements showing the current account balance, the interest credited, drafts or checks written, and any other account activity.
8. The minimum interest rate to be credited to the account and how the actual interest rate will be determined.
9. Notice that the interest earned on the account may be taxable.
10. Notice that retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (FDIC) but are guaranteed by the State Guaranty Associations. The beneficiary should be advised to contact the National Organization of Life and Health Guaranty Associations (www.nolhga.com) to learn more about the coverage limitations to his or her account.
11. A description of the insurer’s policy regarding retain asset accounts that may become inactive.”

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<thead>
<tr>
<th>State</th>
<th>Source</th>
<th>Details</th>
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<tbody>
<tr>
<td>Connecticut</td>
<td>N/A.</td>
<td>No statutes or regulations.</td>
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</table>
| Delaware   | Delaware Department of Insurance, *Domestic/Foreign Insurers Bulletin No. 39* (Aug. 2, 2010) | *Bulletin No. 39* states that “if the insurer offers the beneficiary settlement options other than immediate cash payment of the full benefit amount, the insurer should provide the beneficiary with a supplemental contract that clearly discloses the rights and obligations of both the beneficiary and the insurer with respect to the benefit.”

The written disclosures in the supplemental contract must include the following:

“(1) The “Checkbook.” Literature describing the settlement options must clearly disclose that payment of the total proceeds in accomplished by delivery of a “checkbook,” if that is the case. It should be disclosed to the beneficiary that one check can be written to access the entire proceeds, and that the other options are preserved until the entire balance is withdrawn.
or the balance drops below the insurer’s minimum payment requirements.

(2) The Account. The insurer should disclose whether the account is a checking or draft account and explain the account’s features. The disclosure document should include information about what banking services are provided to the account holder and by whom. It should be clearly stated which services are provided at no charge, and which services involve a fee. The nature and frequency of statements should be disclosed. The disclosure document should also provide a phone number and address where the beneficiary can obtain additional information and answers to questions.

(3) Tax Implications. The disclosure information should indicate that there may be tax on the interest earned on the account, and the beneficiary should consult his or her tax advisor.

(4) Other Options. Literature describing the settlement options should clearly disclose what other options are available under the policy. Where appropriate, the interest rate being paid under those options should also be disclosed.

C. Interest. The insurer should disclose the interest rate being paid under the retained asset account. The disclosure should include a description of how the interest rate is determined and how it is credited to the account.”

| Florida     | Fla. Stat. § 627.473 (2015) | Florida allows the utilization of retained asset accounts through the following statute:

“Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by the beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so |
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<tr>
<th>State</th>
<th>Statute/Regulation</th>
<th>Description</th>
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<tr>
<td>Georgia</td>
<td>N/A.</td>
<td>No statutes or regulations.</td>
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| Hawaii | Haw. Rev. Stat. § 431:10D-112 (2015) | Hawaii allows the utilization of retained asset accounts through the following statute:  
“Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries, and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate funds so held but may hold them as part of its general assets.” |
| Idaho | N/A. | No statutes or regulations. |
| Illinois | Illinois Department of Insurance, Company Bulletin 2011-03 (Dec. 12, 2011) | Illinois requires the following with regards to retained asset accounts to avoid 10% interest accrual:  
“Section 1. Explanation of Settlement Options. The insurer shall provide to the beneficiary, at the time a claim is made, written information describing 10% interest accrual and the settlement options available under the policy and how to obtain specific details relevant to the options.  
Section 2. Supplemental Contract. If the insurer settles benefits through a retained asset account, 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.  
Section 3. Disclosures for Retained Asset Accounts to Beneficiaries. The insurer shall provide the following written disclosures to the beneficiary before the account is selected, if optional, or established, if not:  
A. Payment of the full benefit amount is
accomplished by delivery of the “draft book” / “check book.”

B. One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.

C. Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.

D. A statement identifying the account as either a checking or draft account and an explanation of how the account works.

E. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services.

F. A description of fees charged, if applicable.

G. The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity.

H. The minimum interest rate to be credited to the account and how the actual interest rate will be determined.

I. The interest earned on the account may be taxable.

J. Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (FDIC), but are guaranteed by State Guaranty Associations. The insurer must advise the beneficiary 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.

K. A description of the insurer’s policy regarding retained asset accounts that may become inactive.”

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<tr>
<th>State</th>
<th>Requirements</th>
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<tr>
<td>Indiana</td>
<td>N/A. No statutes or regulations.</td>
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<tr>
<td>Iowa</td>
<td>Iowa requires the following with retained asset accounts:</td>
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<tr>
<td></td>
<td>“1. Explanation of Settlement Options. The insurer shall provide the beneficiary, at the time a claim is made, written information describing</td>
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the settlement options available under the policy and how to obtain specific details relevant to the options.

2. Supplemental Contract. If the insurer settles benefits through a retained asset account, 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.”

The written disclosures must include the following:

“A. Payment of the full benefit amount is accomplished by delivery of the “draft book” / “check book.”
B. One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.
C. Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.
D. A statement identifying the account as either a checking or draft account and an explanation of how the account works.
E. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services.
F. A description of fees charged, if applicable.
G. The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity.
H. The minimum interest rate to be credited to the account and how the actual interest rate will be determined.
I. The interest earned on the account may be taxable.
J. Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (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.

K. A description of the insurer’s policy regarding retained asset accounts that may become inactive.

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<tr>
<th>State</th>
<th>Source</th>
<th>Retained Asset Accounts in Kansas</th>
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</table>
| Kansas | Kansas Insurance Department, *Bulletin 1995-22* (Dec. 8, 1995) | In Kansas, retained asset accounts are only allowed in the following situations:

1. It is a settlement option in the policy as issued;
2. It is a settlement option that is added as a rider or endorsement after the policy is issued; or
3. It is offered as a settlement option that the insured or beneficiary can choose dependent upon the mutual consent of the insured (or beneficiary) and the insurer.

The following must also be disclosed to the insured or beneficiary:

1. If a checkbook is used, a written explanation that the total proceeds will be paid in the form of a checkbook, and the beneficiary can, at anytime, cash one check for the balance of the entire proceeds.
2. A written explanation that explains the account is a checking or draft account and how those accounts work. This explanation must show what banking services are provided to the account holder as part of these accounts and by whom. It should also state which of those services are free and which cost money, the nature and frequency of bank statements, and a phone number and address where the beneficiary can get more information about the accounts.
3. A written explanation that there may be taxes on the earned interest on the account and that the beneficiary should consult his or her tax adviser.
4. A written explanation itemizing the other settlement options available under the policy.
5. A written explanation of the interest rate paid in the retained asset account and an explanation of how the interest is determined and how it is credited to the account.
6. A written explanation of what the limit of |
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<td>The Beneficiaries’ Bill of Rights requires that “A beneficiary shall be informed, prior to the distribution of any life insurance proceeds, of his or her right to receive a lump-sum payment of life insurance proceeds in the form of a bank check or other form of immediate full payment of benefits.” The law also requires that all life insurance proceeds payment options available to the beneficiary shall be disclosed. In addition, the law requires the following specific disclosures: 1. The recommendation to consult a tax, investment, or other financial advisor regarding tax liability and investment options; 2. The initial interest rate, the circumstances and time frames under which interest rates may change, and any dividends and other gains that may be paid or distributed to the account holder; 3. The custodian of the funds or assets of the account; 4. The coverage guaranteed by the Federal Deposit Insurance Corporation (FDIC), if any, and the amount of coverage; 5. The limitations, if any, on the number or amount of withdrawals or transfers of funds from the account, including any minimum or maximum withdrawal amounts for payment of life insurance proceeds; 6. The delays, if any, that the account holder may encounter in completing authorized transactions and the anticipated duration of such delays; 7. The services provided for a fee, including a list of the fees and the method of their calculation; 8. The nature and frequency of statements of account;</td>
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9. The payment of some or all of the life insurance proceeds may be by the delivery of checks, drafts, or other instruments to access the available funds;
10. The entire life insurance proceeds are available to the account holder by the use of one (1) check, draft, or other instrument;
11. The insurer or a related party may derive income, in addition to any fees charged on the account, from the total gains received on the investment of the balance of funds in the account;
12. The telephone number, address, and other contact information, including a Web site address, to obtain additional information regarding the account; and
13. The following statement, “FOR FURTHER INFORMATION, PLEASE CONTACT YOUR STATE DEPARTMENT OF INSURANCE.”

| Louisiana | Louisiana Department of Insurance, Bulletin No. 2012-01, (Mar. 15, 2012) | Louisiana law requires that the beneficiary of a life insurance policy be allowed to have the opportunity to select a lump sum payment for life insurance policy settlement.

If a retained asset account is utilized, then the following disclosures must be provided to beneficiaries:

1. The recommendation to consult a tax, investment, or other financial advisor regarding tax liability and investment options;
2. The payment of some or all of the proceeds of the death benefit may be made by the delivery of checks, drafts, or other instruments to access the death benefit funds;
3. The entire proceeds are available to the account holder by the use of one such check, draft, or other instrument;
4. The initial rate of interest and the method of calculation of any interest, dividends, or other gains that the life insurer may pay or distribute to the account holder;
5. The name and contact information for use in accessing the death benefit funds deposited in the retained asset account;
6. The financial protections, guarantees, or |
insurance coverage covering the retained asset account;
7. The banking or other financial services offered to the account holder;
8. The limitations on the number and amount of withdrawals of death benefit funds from the retained asset account, including any minimum or maximum payment amount;
9. The delays, if any, that the account holder may encounter in completing authorized transactions and the anticipated duration of such delays;
10. The services provided for a fee and a list of the fees or the method of their calculation;
11. The nature and frequency of statements of the retained asset account;
12. The income that may be derived by the insurer or a related party, in addition to any fees charged on the retained asset account, from the total gains received on the investment of the balance of funds in the retained asset account;
13. The telephone number, address and other contact information within the life insurer whereby the account holder may obtain additional information regarding the retained asset account;
14. The telephone number, address and other contact information for the Louisiana Department of Insurance;
15. The life insurer’s policy regarding inactivity in the retained asset account and the effect of state unclaimed property laws.

Maine’s regulations include the following:

“1. Explanation of Settlement 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.

2. Supplemental Contract. If the insurer settles benefits through a retained asset account, 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.”

The following disclosures are also required to be provided to the beneficiaries:

A. Payment of the full benefit amount is accomplished by delivery of the “draft book”/”check book”.
B. One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.
C. Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.
D. A statement identifying the account as either a checking or draft account and an explanation of how the account works.
E. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services.
F. A description of fees charged, if applicable.
G. The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity.
H. The minimum interest rate to be credited to the account and how the actual interest rate will be determined.
I. The interest earned on the account may be taxable.
J. Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (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.
K. A description of the insurer’s policy regarding retained asset accounts that may become inactive.
Maryland


Under Maryland law, an insurer may offer a retained asset account as a life insurance policy settlement option but at least one other settlement option must be offered and all settlement options available must be disclosed to the beneficiary in writing.

The following disclosures must be provided in writing:

(i) A recommendation to consult a tax advisor, an investment advisor, or any other financial advisor regarding tax liability and investment options;
(ii) An explanation of the features of the Retained asset account, including:
   1. The method used to determine interest rates applied to the retained asset account when and how interest rates may change, and any dividends and other gains that may be paid or distributed to the account holder;
   2. The custodian of the funds or assets of the retained asset account;
   3. Whether the funds in the retained asset account are guaranteed by the Federal Deposit Insurance Corporation (FDIC) and the amount of the coverage, if any;
   4. The limitations, if any, on the numbers and accounts of withdrawals of funds from the retained asset account or investment, including any minimum or maximum withdrawal amounts;
   5. The services provided for a fee, including a list of the fees or the method of their calculation;
   6. The nature and frequency of statements of account;
   7. A statement that the obligation of the insurer to pay the total policy or contract proceeds is satisfied by depositing the total proceeds in the retained asset account;
   8. A statement that the entire proceeds are available to the account holder by the use of one check, draft, or other instrument;
   9. A statement that the insurer or a related party may derive income, in addition to any fees charged on the retained asset account, from the total gains received on the investment of the
balance of funds in the retained asset account; and
10. The telephone number, address, and other contact information, including Web site address, for obtaining additional information regarding the retained asset account; and
(iii) The statement “For further information, please contact your state insurance department”.

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<tr>
<th>State</th>
<th>Disclosure</th>
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<tr>
<td>Massachusetts</td>
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<tr>
<td>Michigan</td>
<td>N/A. No statutes or regulations.</td>
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<tr>
<td>Minnesota</td>
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<tr>
<td>Mississippi</td>
<td>N/A. No statutes or regulations.</td>
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<tr>
<td>Missouri</td>
<td>N/A. No statutes or regulations.</td>
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The Advisory Memorandum requires the utilization of a supplemental contract in Montana – the memorandum states that “If the insurer offers the beneficiary settlement options other than immediate cash payment of the full benefit amount, the insurer should provide the beneficiary with a supplemental contract that clearly discloses the rights and obligations of both the beneficiary and the insurer with respect to the benefit.”

The following disclosures must be provided:

1. The “Checkbook.” Literature describing the settlement options should clearly disclose that payment of the total proceeds is accomplished by delivery of a “checkbook,” if that is the case. It should be disclosed to the beneficiary that one check can be written to access the entire proceeds, and that the other options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum payment requirements.

2. The Account. The insurer should disclose whether the account is a checking or draft account and explain the account’s features. The disclosure document should include information about what banking services are provided to the account holder and by whom. It should be clearly stated which services are provided at no charge, and which services involve a fee. The nature and frequency of statements should be disclosed. The disclosure document should also...
provide a phone number and address where the beneficiary can obtain additional information and answers to questions.

(3) Tax Implications. The disclosure information should indicate that there may be tax on the interest earned on the account, and the beneficiary should consult his or her tax advisor.

(4) Other Options. Literature describing the settlement options should clearly disclose what other options are available under the policy. Where appropriate, the interest rate being paid under those options should also be disclosed.

The Advisory Memorandum also states that “The insurer should disclose the interest rate being paid under the retained asset account. The disclosure should include a description of how the interest rate is determined and how it is credited to the account.”

| Nebraska | Nebraska Department of Insurance, CB-125, (Mar. 18, 2011) | Nebraska Bulletin CB-125 requires that “The insurer shall provide the beneficiary, at the time a claim is made, written information describing the settlement options available under the policy or how to obtain specific details relevant to the options.”

The Bulletin also requires insurers who utilize retained asset accounts to provide a beneficiary with a supplemental contract that “clearly discloses the rights of the beneficiary and obligations of the insurer under the supplemental contract.”

In addition, the Bulletin mandates that the following disclosures be provided to the beneficiary:

1. Payment of the full benefit amount is accomplished by delivery of the “draft book”/”check book”.
2. One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.
3. Whether other available settlement options...
are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.
4. A statement identifying the account as either a checking or draft account and an explanation of how the account works.
5. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services.
6. A description of fees charged, if applicable.
7. The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity.
8. The minimum interest rate to be credited to the account and how the actual interest rate will be determined.
9. The interest earned on the account may be taxable.
10. Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (FDIC).
11. A description of the insurer’s policy regarding retained asset accounts that may become inactive.


1) Insurers must offer the beneficiary full cash payment or settlement option in accordance with the contract.
2) The insurer must provide the beneficiary a supplemental contract that discloses their rights and the insurer’s obligations.
3) The insurer must provide a disclosure which states: Proceeds are distributed by a checkbook (if the case); one check can be written for the full sum; what options are preserved until the entire balance is withdrawn or the balance drops below the insurers minimum; whether the account is a checking or draft account; what banking services are provided; what services are provided and if fees are charged; the frequency of statements; info where the beneficiary can get more information; that tax may be charged on the interest, what other options are available; and |
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<th>State/Province</th>
<th>Reference</th>
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| New Hampshire | State of New Hampshire Insurance Department, *Bulletin 10-046-AB*, (Dec. 21, 2010) | New Hampshire Bulletin 10-046-AB requires that “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.”

The Bulletin also requires insurers who utilize retained asset accounts to provide a beneficiary with a supplemental contract that “clearly discloses the rights of the beneficiary and obligations of the insurer under the supplemental contract.”

In addition, the Bulletin mandates that the following disclosures be provided to the beneficiary:

A. Payment of the full benefit amount is accomplished by delivery of the “draft book”/”check book”.
B. One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.
C. Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.
D. A statement identifying the account as either a checking or draft account and an explanation of how the account works.
E. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services.
F. A description of fees charged, if applicable.
G. The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity.
H. The minimum interest rate to be credited to the interest being charged and how the interest is calculated.

4) The funds to cover the funds within the RAA must be reported on the annual statement.
the account and how the actual interest rate will be determined.

I. The interest earned on the account may be taxable.

J. Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (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.

K. A description of the insurer’s policy regarding retained asset accounts that may become inactive.

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<tr>
<td>New Jersey requires insurers to provide the following disclosures to beneficiaries:</td>
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<tr>
<td>i. A statement that payment of the full benefit amount is accomplished by delivery of the draft book/checkbook or similar instrument;</td>
<td></td>
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<tr>
<td>ii. A statement that one draft or check may be written to access the entire amount, including interest, of the RAA at any time;</td>
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<tr>
<td>iii. Notice whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirement;</td>
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<tr>
<td>iv. A statement identifying the account as either a checking or draft account and an explanation of how the account works;</td>
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<tr>
<td>v. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services;</td>
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<td>vi. A description of fees charged, if applicable;</td>
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<tr>
<td>vii. Information about the frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity, and the method of delivery of such statements (i.e., via postal mail, email, etc.);</td>
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<tr>
<td>viii. How the interest rate to be credited to the account will be determined;</td>
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</tbody>
</table>
A statement that the interest earned on the account may be taxable;

A statement that RAA funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (“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 coverage or limitations to his or her account.

A description of the insurer’s policy regarding RAAs that may become inactive.

| New Mexico  | N/A. | No statutes or regulations. |
| New York    | New York Department of Financial Services, *Insurance Circular Letter No. 4 (2012)*, (Mar. 29, 2012) | New York regulations require that “Any form by which a settlement option is elected should clearly and conspicuously state that payment of the full life insurance proceeds in a single check is available. If no election is made, the insurer should send to the beneficiary a single check for the full life insurance proceeds. In no event should the insurer establish an RAA unless there has been an affirmative election authorizing the insurer to do so.”

The following disclosures must be provided by an insurer to a beneficiary if the beneficiary affirmatively elects to utilize a retained asset account:

1. In addition to an option to establish an RAA, a list of other available options from which the beneficiary may choose. Unless the policy provides for payment of the life insurance proceeds only in installments, one option should be for payment by a single check for the full proceeds. The option to receive the full life insurance proceeds as a single check should be offered as prominently as all other listed available options.
2. Notice that the settlement of the beneficiary’s claim made under the life insurance policy or certificate will be made through the delivery of a draft or check kit to the beneficiary where the RAA option is elected.
3. An accurate description of the nature of the RAA, including: that the beneficiary’s funds are held by the insurer (or affiliated entity, where applicable) and not in a bank or other institution; and whether or not the insurer is earning or has the potential to earn income on the beneficiary’s funds held in the RAA.
4. The name and address of the bank or other institution where the insurer will establish the account, and whether the account is a draft or checking account.
5. Notification that one draft or check (whichever is applicable) can be written at any time to access the full life insurance proceeds or remaining balance in the account.
6. Notification of whether or not RAA funds are insured by the Federal Deposit Insurance Corporation (FDIC) and, if so, the extent of such insurance.
7. 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.
8. The nature and frequency of statements that will be sent to an RAA holder.
9. Notification of an RAA holder’s right to designate a beneficiary for the RAA.
10. Any restrictions on the usage of RAA drafts or checks (whichever is applicable), including minimum benefit payment restrictions, the number of withdrawals permitted within any time period and any applicable minimum withdrawal amounts.
11. An 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.
12. The minimum interest rate that may be paid on RAA funds, and a description of how the interest rate is determined and credit to the account.
13. A disclosure indicating that choosing an RAA may have tax implications and that the beneficiary should consult a tax advisor.
14. 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.

15. A telephone number and address where the beneficiary may obtain additional information and answers to any questions, including the current interest rate.

| **North Carolina** | N.C. ADMIN. CODE § 12.1602 and § 12.1603 (2015) | North Carolina regulations require that a retained asset account cannot be utilized unless the insurer complies with the following:

1. The retained asset account shall be specifically identified as a settlement option within the terms of the claim form in conjunction with any other mode of settlement.
2. The policy owner shall be provided the contractual right of selection from all available optional modes of settlement before death or death of the insured if the insured is not the policy owner.
3. The insurer shall provide the beneficiary with information that clearly discloses the rights and obligations of both the beneficiary and the insurer with respect to the mode of settlement.

The following disclosures must be provided by the insurer to the beneficiary in writing:

1. Any other settlement options available under the policy.
2. Any interest being paid under other options.
3. Whether the retained asset account is the equivalent of a checking or draft account.
4. An explanation of the account’s features, including:
   a. What banking services are provided to the account holder.
   b. Which services are provided at no charge and which services involve a fee and the amount of the fee.
   c. The nature and frequency of account statements.
   d. A telephone number and address where the beneficiary can obtain additional information regarding the account.
   e. Any minimum or maximum benefit payment
requirements under the account.
(f) The number of withdrawals permitted within any time period.
(5) That payment of the total proceeds is accomplished by delivery of a “checkbook kit” or “draft kit” to the beneficiary.
(6) That one check or draft can be written to access the entire proceeds and that other settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum payment requirements.
(7) Any time delays the beneficiary should expect to encounter in completing any authorized transaction under a retained asset account and the anticipated amount of such time delay.
(8) That interest earned on the account may be taxable and the beneficiary should consult a tax advisor.
(9) The methodology used to determine the interest rate being paid under the retained asset account.

| North Dakota | North Dakota Department of Insurance, Bulletin 2000-3, (Aug. 3, 2000) | North Dakota requires insurers to provide beneficiaries the following disclosures:
(a.) The Checkbook. If a checkbook option is offered, literature must clearly disclose that payment of the total proceeds is accomplished by depositing the proceeds into an account and delivery of a checkbook. It must be disclosed to the beneficiary that one check can be written to access the entire proceeds, and that any other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum payment requirements.
(b.) The Account. The insurer must disclose whether the account is a checking or draft account and explain the account’s features. The disclosure must include information about the banking services that are provided and by whom. It should clearly identify which services are provided at no charge and which services involve a fee. The nature and frequency of the mailing of statements should be disclosed. The disclosure document must also provide a |
telephone number and address where the beneficiary can obtain additional information.

(c). Tax Implications. The disclosure information must indicate that there may be tax on the interest earned on the account, and the beneficiary should consult his or her tax advisor. (d). Other Options. All other available settlement options must be clearly described. Where appropriate, the interest rate being paid must also be disclosed.

(e). Default. If an insured does not choose one of the available settlement options or if the claimant does not offer payment options, the retained asset account may be the default only if the retained asset account default information is conspicuously disclosed by bolded enlarged type on the claim form.

North Dakota regulations also state the following:

2. Interest. The insurer must disclose the interest rate being paid under the retained asset account. The disclosure must include a description of how the interest rate is determined and how it is credited to the account.

Finally, North Dakota regulates also state:

4. Lump Sum Option. If the claimant or beneficiary statement form offers a lump sum payment and the company utilizes retained asset accounts, the form must allow the claimant to choose whether to receive payment directly by check or indirectly by depositing the proceeds into a retained asset account.

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Ohio regulations state the following:

“Section 1. Explanation of Settlement Options. The insurer should 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.”
Section 2. Supplemental Contract. If the insurer settles benefits through a retained asset account, the insurer should provide the beneficiary with a supplemental contract that clearly discloses the rights of the beneficiary and obligations of the insurer under the supplemental contract.”

The regulations also require the following written disclosures to be provided to the beneficiary:

A. Payment of the full benefit amount is accomplished by delivery of the “draft book”/”check book”.
B. One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.
C. Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.
D. A statement identifying the account as either a checking or draft account and an explanation of how the account works.
E. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services.
F. A description of fees charged, if applicable.
G. The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity.
H. The minimum interest rate to be credited to the account and how the actual interest rate will be determined.
I. The interest earned on the account may be taxable.
J. Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (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. K. A description of the insurer’s policy regarding retained asset accounts that may become inactive.

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<tr>
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| Rhode Island     | R.I. GEN. LAWS §§ 27-4.9-1 to 27.4.9-7 (2015) | The Rhode Island Beneficiaries’ Bill of Rights statute requires that an insurer inform a beneficiary of the right to receive a lump-sum payment of life insurance proceeds and requires disclosure of the option of utilization of a retained asset account to a beneficiary prior to using a retained asset account for life insurance policy settlement. The statute requires the following disclosures be provided by the insurer:

1. The recommendation to consult a tax, investment, or other financial advisor regarding tax liability and investment options;
2. The initial interest rate, when and how interest rates may change, and any dividends and other gains that may be paid or distributed to the account holder;
3. The custodian of the funds or assets of the account;
4. The coverage guaranteed by the Federal Deposit Insurance Corporation (FDIC), if any, and the amount of such coverage;
5. The limitations, if any, on the numbers and amounts of withdrawals of funds from the account, including any minimum or maximum benefit payment amounts;
6. The delays, if any, that the account holder may encounter in completing authorized transactions and the anticipated duration of such delays;
7. The services provided for a fee, including a list of the fees or the method of their calculation;
8. The nature and frequency of statements of account;
9. The payment of some or all of the proceeds.
of the death benefit may be by the delivery of checks, drafts, or other instruments to access the available funds;
(10) The entire proceeds are available to the account holder by the use of one such check, draft, or other instrument;
(11) The insurer or a related party may derive income, in addition to any fees charged on the account, from the total gains received on the investment of the balance of funds in the account;
(12) The telephone number, address, and other contact information, including website address, to obtain additional information regarding the account; and
(13) The following statement: “For further information, please contact the department of business regulation.”

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| Virginia      | VA. CODE ANN. §§ 38.2-3117.1 to 38.2-3117.4 (2015) | The Virginia statute states that “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.”

The statute also notes that “If the insurer settles benefits through a retained asset account, the insurer shall provide the beneficiary with a supplemental contract that clearly discloses the rights of the beneficiary and the obligations of the insurer under the supplemental contract.”

The following disclosures are required to be provided by the insurer:

1. Payment of the full benefit amount is accomplished by delivery of the draft book or check book;
2. One draft or check may be written to access
the entire amount, including interest, of the retained asset account at any time;
3. Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements;
4. A statement identifying the account as either a checking account or a draft account and an explanation of how the account works;
5. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services;
6. A description of fees charged, if applicable;
7. The frequency of statements showing the current account balance, the interest credited, drafts or checks written, and any other account activity;
8. The minimum interest rate to be credited to the account and how the actual interest rate will be determined;
9. The interest earned on the account may be taxable;
10. Retained asset account funds held by insurance companies are not insured by the Federal Deposit Insurance Corporation but are guaranteed by the state guaranty association. The beneficiary should be advised to contact the National Organization of Life and Health Insurance Guaranty Associations via the association’s website to learn more about the coverage limitations to the account under a state guaranty association; and
11. A description of the insurer’s policy regarding retained asset accounts that become inactive.

| Washington | N/A. | No statutes or regulations. |
| West Virginia | West Virginia Offices of the Insurance Commissioner, *Informational Letter No. 178A*, (May 1, 2011) | West Virginia regulations state that “At the time a claim is made, an insurer must provide a beneficiary of a life insurance policy written information describing the settlement options available under the policy and how to obtain additional information. If the insurer provides benefits through a retained asset account, it must present the beneficiary with a supplemental contract that clearly discloses the rights of the |
beneficiary and obligations of the insurer under the supplemental contract.”

The following disclosures must be provided to the beneficiary by the insurer:

a. A statement that payment of the full benefit amount is accomplished by delivery of the “draft book” or “check book” to the beneficiary;
b. A statement that one draft or check may be written to access the entire amount, including interest, of the retained asset account at any time;
c. A description of whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements;
d. A statement identifying the account as either a checking or draft account and an explanation of how the account works;
e. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services;
f. A description of fees charged, if applicable;
g. Information about the frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity;
h. Information about the minimum interest rate to be credited to the account and how the actual interest rate will be determined;
i. A statement that interest earned on the account may be taxable.
j. A statement that retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation, but guaranteed, subject to certain limitations, by the respective state guaranty association. (The beneficiary should also 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.); and
k. A description of the insurer’s policy.
Regarding retained asset accounts that may become inactive:

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