

Florida Office of Insurance Regulation



2008 Report on Life Insurance Limitations Based on Foreign Travel Experiences

March 1, 2008

Life Insurance Limitations on Freedom to Travel to Foreign Countries

Background and Findings:

Subsection 626.9541(1)(dd), Florida Statutes, enacted in 2006, defines the conditions under which the refusal of life insurance or the refusal to continue existing life insurance based on past or future lawful travel constitutes an unfair trade practice. Part 6 requires the Office of Insurance Regulation (Office) to report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this paragraph by March 1 of each year. The report is to include, but not be limited to, the number of applications under which life insurance was denied, continuance was refused, or coverage was limited based on future travel plans; the number of insurers taking such action; and the reason for taking each such action. A full copy of the statute can be found in Appendix A.

This is the second year of this annual report; the first report was issued on March 1, 2007, and can be found on the Office's web site (<http://www.florir.com>). The data outlined in Subsection 626.9541(1)(dd), Florida Statutes for 2007 is as follows:

Category	Applications	Companies
Applications Received ¹	1,325,365	436
Applications under which life insurance was denied ²	7	4
Instances under which continuance was refused	0	0
Instances in which coverage was limited based on future travel plans ³	9	3

As stated above, the data represents applications from 436 companies. There were 88 companies⁴ that did not respond to the data call. The Office will take appropriate action against these companies.

Individual companies' reasons for taking these actions vary, but frequently mentioned "human error;" often the company used this practice in other states, and inadvertently

¹ The 1,325,365 cumulative number aggregates life and annuity applications. There were 1,034,392 life applications and 290,973 annuity applications.

² All seven (7) instances pertained to life insurance applications, not annuity applications.

³ All nine (9) instances pertained to life insurance applications, not annuity applications.

⁴ These 88 companies include 30 companies that were "de-activated" during calendar year 2007. De-activation can include suspension, withdrawal, or surrendered insurance licenses during 2007.

applied this practice to a Florida applicant. Another instance of an application denial pertained more to foreign residency, than foreign travel. One insurance company asserted one applicant was denied due to upcoming foreign travel in conjunction with being on active duty with the National Guard. The Office is reviewing these responses to determine their consistency with Florida Statutes and Rules. If a violation is deemed to have occurred, appropriate action will be taken.

Company Survey

The Office obtained the application information through a data call sent to 524 entities in the industry licensed to write life insurance⁵ during calendar year 2007. In addition to the data call, the Market Investigations Unit also conducted a survey of the industry to ask more specific questions regarding the foreign travel issue. The survey was sent November 16, 2007 and covered the timeframe of December 16, 2006 to September 30, 2007.

The industry survey was more focused than the data call; it focused on all Life & Health Insurance Companies that reported written premium for life insurance in 2006, or showed positive premium for the first two quarters of 2007.⁶ The survey inquired about company procedures and underwriting guidelines, and was mailed to 407 insurance companies.

Two companies self-identified that their company had a procedure and/or underwriting guideline that amended/refused life insurance based on foreign travel. In addition, four companies self-identified that their company had a procedure and/or underwriting guideline that limited coverage based on foreign travel. While these may not be violations (a company could technically have a procedure or guideline without taking action), the Office will review this information, and take appropriate action if needed.

It is important to note that insurance companies are permitted under the current statute to ask questions pertaining to foreign travel, provided they do not take adverse action based on the answer of the applicant. Currently the Office maintains a list of 105 insurers that ask foreign travel related questions on one or more of their life insurance applications. A list of the companies is included in Appendix B.

Market Investigations Unit Examinations

In the 2007 Report on Life Insurance Limitations on Freedom to Travel, the Office reported that 11 companies were identified for on-site sampling and examination. Since the initial report, the Office finalized seven of these examinations resulting in fines of \$108,000:

⁵ The data call focused on all licensed entities in Florida that were licensed to write at least one of the following lines of business: 400-Life, 405-Variable Annuities, 410-Group Life and Annuities, 420-Variable Life, or 425-Fraternal Life.

⁶ Due to National Association of Insurance Commissioners (NAIC) reporting requirement deadlines, this was the most recent data at the time of the development of the industry survey.

- **American General Life & Accident (\$7,500)**
- **Americo Financial Life & Annuity (\$3,000)**
- **CUNA Mutual Life (\$7,500)**
- **Great-West Life & Annuity (\$22,500)**
- **Shenandoah Life (\$22,500)**
- **USAA Life (\$22,500)**
- **Western-Southern Life (\$22,500)**

The completed market conduct examination reports, and company consent orders can be found on the Office's web site (<http://www.florir.com>).

The Office has identified 20 additional companies scheduled for examination in the upcoming year. While the actual criteria for selecting these companies is confidential as it is statutorily defined as an "investigative technique," generally these companies were targeted based on a deliberative review of such elements as consumer complaints, answers to past surveys, form filings, and other industry factors. Appropriate action will be taken as the examinations proceed.

Other Regulatory Changes

Prior to enactment of the current law, the Financial Services Commission (FSC) began adoption of a rule based on the current Unfair Trade Practices Act. That rule, 69O-125.003 Unfair Discrimination Because of Travel Plans was enacted on July 6, 2006. During the rule-making process, the Florida Legislature passed the new law, Section 626.9541(1)(dd), Florida Statutes.

Given the new law, the FSC re-opened the rule, and made changes to reflect the promulgation of the new statute. The FSC finalized the new rule (with the same name and administrative code number) on November 1, 2007. See Appendix C.

Other National Changes

As reported in the last issue of this report, several states have enacted legislation to restrict the practice of denying life insurance based on travel plans. In addition to Florida, the states of California, Connecticut, Illinois, Maryland, Massachusetts, and New York have attempted to address this issue.

In March 2006, the National Association of Insurance Commissioners' (NAIC) Life and Annuity Insurance (A) Committee formed the Travel to Foreign Countries Working Group. This committee analyzed the issue of foreign travel and life insurance and drafted a revision to the NAIC Unfair Trade Practices Act (Model 880) on December 20, 2006. The most recent draft dated June 12, 2007, contained fewer consumer protections than currently exist in Florida law. This model has been debated, but as of this date, has not been adopted by the NAIC.

To date, the U.S. Congress has not passed any laws that would preempt state jurisdiction of this issue. Congresswoman Debbie Wasserman Schultz has developed legislative language to address this issue; the language contains strong consumer protections. Congresswoman Schultz is working to enact a law that establishes minimum federal standards for consumer protections on this issue.

Appendix A

(dd) Life insurance limitations based on past foreign travel experiences or future foreign travel plans.--

1. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences.
2. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful travel plans unless the insurer can demonstrate and the Office of Insurance Regulation determines that:
 - a. Individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel; and
 - b. Such risk classification is based upon sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.
3. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this paragraph and may provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy.
4. Each market conduct examination of a life insurer conducted pursuant to s. 624.3161 shall include a review of every application under which such insurer refused to issue life insurance; refused to continue life insurance; or limited the amount, extent, or kind of life insurance issued, based upon future lawful travel plans.
5. The administrative fines provided in s. 624.4211(2) and (3) shall be trebled for violations of this paragraph.
6. The Office of Insurance Regulation shall report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2007, and on the same date annually thereafter, on the implementation of this paragraph. The report shall include, but not be limited to, the number of applications under which life insurance was denied, continuance was refused, or coverage was limited based on future travel plans; the number of insurers taking such action; and the reason for taking each such action.

Appendix B

List of 105 Companies that Ask Travel Related Questions

COMPANY NAME	NAIC COMPANY CODE
5 Star Life Ins Co	77879
Acacia Life Ins Co	60038
AGL Life Assurance Co	60232
AIG Life Ins Co	66842
Allianz Life Ins Co Of North America	90611
Allstate Life Ins Co	60186
American United Life Ins Co	60895
Ameritas Life Ins Corp	61301
Ameritas Variable Life Ins Co	97977
Annuity & Life Reassurance America Inc	62421
Aviva Life Ins Co	62898
AXA Equitable Life Ins Co	62944
Balboa Life Ins Co	68160
Banner Life Ins Co	94250
Berkshire Life Ins Co of America	71714
Best Meridian Ins Co	63886
Boston Mutual Life Ins Co	61476
Chesapeake Life Ins Co	61832
CM Life Ins Co	93432
Colonial Life & Accident Ins Co	62049
Columbian Life Ins Co	76023
Columbian Mutual Life Ins Co	62103
Combined Ins Co Of America	62146
Commonwealth Ann & Life Ins Co	84824
Conseco Ins Co	60682
Cotton States Life Ins Co	62537
Cuna Mutual Ins Society	62626
Farmers & Traders Life Ins Co	63193
Federated Life Ins Co	63258
Fidelity Investments Life Ins Co	93696
First Allmerica Fin Life Ins Co	69140
First Metlife Investors Ins Co	60992
Freedom Life Ins Co Of America	62324
Garden State Life Ins Co	63657
General American Life Ins Co	63665
Government Personnel Mutual Life Ins Co	63967
Guardian Ins & Annuity Co Inc	78778
Harleysville Life Ins Co	64327
Hartford Life & Accident Ins Co	70815
Hartford Life & Annuity Ins Co	71153
Hartford Life Ins Co	88072
Jackson National Life Ins Co	65056
Kansas City Life Ins Co	65129
Liberty Life Assurance Co Of Boston	65315

Liberty Life Ins Co	61492
Liberty National Life Ins Co	65331
Life Investors Ins Co Of America	64130
Lincoln Benefit Life Co	65595
Lincoln National Life Ins Co	65676
Mega Life & Health Ins Co The	97055
MetLife Investors Ins Co	93513
MetLife Investors USA Ins Co	61050
Metlife Life & Annuity Co of CT	80950
Metropolitan Life Ins Co	65978
Metropolitan Tower Life Ins Co	97136
Mid West National Life Ins Co Of TN	66087
Midland National Life Ins Co	66044
Monumental Life Ins Co	66281
Mony Life Ins Co Of America	78077
Mutual Of America Life Ins Co	88668
National Life Ins Co	72087
National Western Life Ins Co	66850
Nationwide Life & Ann Co of America	70750
Nationwide Life And Annuity Ins Co	92657
Nationwide Life Ins Co	66869
Nationwide Life Ins Co of America	68225
New England Life Ins Co	91626
New York Life Ins & Annuity Corp	91596
New York Life Ins Co	66915
North American Co Life & Health Ins	66974
Northwestern Mutual Life Ins Co	67091
NY Life Ins Co Of AZ	81353
Old Republic Life Ins Co	67261
Ozark National Life Ins Co	67393
Pacific Life & Annuity Co	97268
Pacific Life Ins Co	67466
PHL Variable Ins Co	93548
Phoenix Life & Annuity Co	93734
Phoenix Life Ins Co	67814
Physicians Mutual Life Ins Co	72125
Pioneer Mutual Life Ins Co	67911
Presidential Life Ins Co	68039
Pruco Life Ins Co	79227
Prudential Ins Co Of America	68241
Reassure America Life Ins Co	65765
Reliastar Life Ins Company	67105
RiverSource Life Ins Co	65005
S USA Life Ins Co Inc	60183
Sagicor Life Ins Co	60445
Security Life Of Denver Ins Co	68713
Sentry Life Ins Co	68810
Sentry Life Ins Co Of NY	68829
Stonebridge Life Ins Co	65021
Sunset Life Ins Co Of America	69272
Surety Life Ins Co	69310

Texas Life Ins Co	69396
Trans World Assurance Co	69566
Union Central Life Ins Co	80837
United Investors Life Ins Co	94099
United Of Omaha Life Ins Co	69868
United States Life Ins Co In NYC	70106
Universal Underwriters Life Ins Co	70173
US Financial Life Ins Co	84530
Valley Forge Life Ins Co	70211
Western Reserve Life Assurance Co of OH	91413

Appendix C

690-125.003 Unfair Discrimination Because of Travel Plans.

(1) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue or refuse to continue any policy, contract or certificate of insurance of any individual, or limit the amount, extent or kind of insurance coverage offered to an individual, an accident, disability or health insurance policy or certificate, because of the intent of the applicant to engage in future lawful foreign travel or based upon past lawful foreign travel, unless the insurer can demonstrate that insureds who have traveled or intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.

(2) No insurer nor person authorized to engage in the business of insurance in the State of Florida, shall, in determining the rates charged an applicant for coverage under any policy, contract or certificate of life insurance, annuity contract, accident, disability or health insurance, issued or to be issued to be delivered to any resident of this state, consider the intent of the applicant to engage in future lawful foreign travel or past lawful travel of the applicant, unless the insurer can demonstrate that insureds who have traveled or intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.

(3) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue any policy, contract or certificate of life insurance to or refuse to continue any policy, contract or certificate of life insurance of any individual or limit the amount, extent or kind of life insurance coverage offered to an individual based solely on the individual's past lawful foreign travel.

(4) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue any policy, contract or certificate of life insurance to or refuse to continue any policy, contract or certificate of life insurance of an individual, or limit the amount, extent or kind of life insurance coverage offered an individual based solely on the individual's future lawful foreign travel plans unless the insurer can demonstrate that individuals who travel are a separate actuarially supportable class whose mortality risk is different from that of individuals who do not travel, and that such risk classification is based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.

(5) An insurer shall file for approval information demonstrating that individuals who travel to a specific destination constitute a separate actuarially supportable class. The insurer shall not utilize such information within any underwriting decision resulting in a refusal to issue, refusal to continue, limitation on amount, extent or kind of life insurance coverage available to an individual until the Office has first approved the filing and determined that the insurer has demonstrated that the underwriting proposed meets compliance with the standards of Section 626.9541(1)(dd), F.S. Nothing in this rule prevents an insurer from asking questions about foreign travel on an application in order to compile information provided such information is not used in any underwriting decision unless the insurer has received prior approval from the Office.

(6) In determining individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination, insurers shall:

- (a) Have performed a detailed actuarial analysis detailing the specific impact of the proposed risk;
- (b) Demonstrate that all similar risks with similar risk exposure are similarly treated and that the risk is outside of the underwriting parameters that the insurer is accepting for its maximum rated risks;
- (c) Use statistically credible data that is specific and relevant to the analysis and risk being evaluated, that is, using a country population death rate is not relevant to the analysis of the risk of short-term travel.

In the absence of actual experience, an actuary may submit for the Office's consideration clear actuarial evidence, including clinical experience or expert opinion relied upon by the actuary that demonstrates to the Office that differences in risk are related to the travel;

(d) Disclose the range of underwriting and rating options and how each is supported by the analysis;

(e) Maintain a report prepared by the actuary providing the information used and relied upon by the actuary in preparing his conclusions, including but not limited to: summarizing the source, basis and relevancy of data used, the impact of the risk on expected loss, the range of expected loss within the underwriting class and how the proposed travel risk falls inside or outside of such underwriting range, the analysis performed and the basis of any conclusions reached. Such report shall disclose how compliance with all appropriate actuarial standards of practice is met and specifically detail any standards that are not.

(7) In accordance with Section 626.9541(1)(dd)3., F.S., an insurer may file a petition for a variance or waiver with the Office for a limited exception from the statute and this rule. The petition shall contain supporting information demonstrating that the requested limited exception(s) are based upon national or international emergency conditions that affect the public health, safety, and welfare and are consistent with public policy.

(8)(a) Insurers are required to maintain the following data. The data for each calendar year shall be submitted to the Office annually by January 31 of the following year:

1. The number of applications under which a policy or certificate of life insurance or an annuity contract was denied;

2. The number of applications under which a policy or certificate of life insurance or an annuity contract's continuation was refused; and

3. The number of applications under which a policy or certificate of life insurance or an annuity contract's coverage was limited.

(b) For each specific case, the insurer shall provide the reason for taking such action.

(c) For each case the insurer shall provide a brief summary, prepared by an actuary, of the supporting data and analysis used in taking such action for such specific destination. Such underlying data and analysis shall be available upon request of the Office.

(9)(a) Violation of this rule constitutes unfair discrimination prohibited by Sections 626.9541(1)(g) and (dd), F.S.

(b) An insurer that uses past travel or future lawful travel in underwriting decisions without having first filed and received approval of the Office shall, among other administrative penalties:

1. Provide restitution to all applicants or insureds that were negatively acted upon by the insurer;

2. Issue the coverage applied for which was rejected, subject to the applicants option of the effective date being the date of application or the current date; and

3. Pay any valid claim of an applicant incurred subsequent to the initial application date.

(10) "Travel" shall not include "residency" or relocation for employment. An individual who is absent from the United States for more than one hundred eighty (180) consecutive days and has established a residence in a foreign country during that period is considered to be residing in that country. Residency in a foreign country is not considered "foreign travel" for purposes of this rule.

Specific Authority 626.9541(1)(dd)3., 626.9611 FS. Law Implemented 626.951, 626.9521, 626.9541(1)(g), (dd) FS. History—New 7-6-06, Amended 11-1-07.