

**Maryland General Assembly
Department of Legislative Services**

**Reproposed Regulations
Maryland Insurance Administration**
(DLS Control No. 16-110)

Overview and Legal and Fiscal Impact

The reproposed regulations correct an internal cross-reference and alter the requirements for certain annuity illustrations under proposed regulations governing annuity disclosures that were published in the *Maryland Register* on January 8, 2016 (43:1 Md.R. 76-83). The original proposal is found under DLS Control No. 15-395P.

The reproposed regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Insurance Administration:

Unfair Trade Practices:

Solicitation of Annuity and Deposit Fund Contracts: COMAR 31.15.04.01-.07

Annuity Disclosure: COMAR 31.15.15.01-.09

Legal Analysis

Background

On December 2, 2015, the Maryland Insurance Administration submitted to the Joint Committee on Administrative, Executive, and Legislative Review regulations that (1) revise COMAR 31.15.04.01 through .07 governing unfair trade practices in the solicitation of annuity contracts and deposit fund contracts to update penalty provisions for a violation of Chapter .04 and remove the regulation of annuity contracts from the chapter and (2) govern unfair trade practices as they relate to the solicitation of annuity contracts under a new Chapter .15 – Annuity Disclosure, which incorporates the National Association of Insurance Commissioners “Annuity Disclosure Model Regulation.” Regulations under Chapter .15 establish standards for the disclosure of the minimum information about annuity contracts necessary to protect consumers, including standards for illustrations provided to consumers by insurers and insurance producers. The original proposal is found under DLS Control No. 15-395P.

The reproposed regulations revise regulations under Chapter .15 to correct an internal cross-reference and address comments relating to standards for illustrations that were received by the administration after the proposed regulations were published in the *Maryland Register*.

Summary of Regulations

The repropounded regulations make two changes to regulations under Chapter .15 as originally proposed. The changes (1) correct an erroneous cross-reference in Regulation .02C and (2) revise the standards for annuity illustrations established under Regulation .05. An “illustration” is defined in Regulation .03B(9) to mean “a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.” Non-guaranteed elements are those elements, including premiums, credited interest rates, and dividends, as well as the elements of formulas used to determine those elements, that are subject to the issuer’s discretion and are not guaranteed at the time an annuity contract is issued (Regulation .03B(13)).

Under the standards established by Regulation .05, § F requires illustrations to conform to a number of requirements, including that the “non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements” (Regulation .05F(8)). The repropounded regulations establish an exception to this requirement under a new § M, which provides that an insurer does not have to consider actuarial assumptions in the dividend scale formula as a non-guaranteed element for annuity illustrations if the insurer offers both participating annuities (which pay dividends from the insurer’s surplus earned on those products) and nonparticipating annuities (which do not pay dividends). According to the administration, this exception was added to address a concern raised by an insurer offering both participating and nonparticipating annuities that, because of the restrictions in Regulation .05F, it could not consider future improvements in interest rates when preparing illustrations for participating annuities, and that this limited a consumer’s ability to compare participating and nonparticipating annuity contracts when deciding which product to purchase. The administration also notes that this exception will make it easier for insurers that offer both types of products to sell participating annuities to consumers.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The administration cites §§ 2-109 and 27-202 of the Insurance Article as statutory authority for the regulations. More specifically, §§ 2-109(a)(1) and 27-202 provide authority for the regulations. Section 2-109(a)(1) establishes the general authority of the Maryland Insurance Commissioner to adopt regulations to carry out the Insurance Article. Section 27-202 prohibits a person from (1) making misrepresentations about the terms of or benefits promised by a policy; (2) making a false or misleading statement about the dividends or share of the surplus previously paid on similar policies; (3) making a misrepresentation about the financial condition of an insurer; or (4) using a name or title of a policy or class of policies that misrepresents the true nature of the policy or class of policies.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The administration advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Judith D. Markoya – (410) 946/(301) 970-5350

Fiscal Analysis: Richard L. Duncan – (410) 946/(301) 970-5510