

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	12/02/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 1/8/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

31 15 04 01-.06

31 15 16 01-.10

3. Name of Promulgating Authority

Maryland Insurance Administration

4. Name of Regulations Coordinator

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5. Name of Person to Call About this Document

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6. Check applicable items:

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 9/8/15.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes - No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by J. Van Dorsey, Assistant Attorney General, (telephone #410-468-2023) on 11/17/15. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Alfred W. Redmer, Jr.

Title

Insurance Commissioner

Telephone No.

410-468-2090

Date

12/2/15

Title 31
MARYLAND INSURANCE ADMINISTRATION

Subtitle 15 UNFAIR TRADE PRACTICES

31.15.04 Solicitation of Annuity and Deposit Fund Contracts

Subtitle 15 UNFAIR TRADE PRACTICES

31.15.16 Annuity Disclosure

Authority: See attached.

Notice of Proposed Action

[]

The Insurance Commissioner proposes to amend Regulations .01 - .06 under COMAR 31.15.04 Solicitation of Annuity and Deposit Fund Contracts, and adopt new Regulations .01 - .10 under a new chapter COMAR 31.15.16 Annuity Disclosure.

Statement of Purpose

The purpose of this action is to adopt the National Association of Insurance Commissioners' (NAIC) "Annuity Disclosure Model Regulation," Model MDL-245. This Model Regulation addresses many of the same issues found in current COMAR 31.15.04, but in more detail. Model MDL-245 was adopted by the NAIC in 1999 and has been amended in 2011 and 2013. Maryland's current chapter, COMAR 31.15.04, which applies to both annuities and deposit fund contracts, has not been amended since its adoption in January 1980. The NAIC Model provides more detailed requirements for annuity illustrations and conforms COMAR to the modern annuity marketplace.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The amendments to this Chapter will have a minimal economic impact on insurers issuing annuities in Maryland.

II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
<hr/>		
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	

Benefit (+) Cost (-)	Magnitude
-------------------------	-----------

- D. On regulated industries or trade groups:
- | | | |
|------------------|-----|---------|
| Compliance Costs | (-) | Minimal |
|------------------|-----|---------|
- E. On other industries or trade groups: NONE
- F. Direct and indirect effects on public: NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. The proposed amendments will have a minimal impact on insurers that issue annuities in Maryland. Some insurers may incur additional administrative costs related to implementing the more detailed annuity disclosures required by the adoption of the NAIC Model. Larger insurers who issue annuities in the national or regional markets would likely see some cost savings, as their annuity disclosures would no longer need to be written to comply with the outdated Maryland regulations. The Commissioner does not believe that any additional costs will be significant, relative to the benefit to the insurer through the use of a national standard annuity disclosure and the benefit to the consumer of the improved disclosure that these amendments provide.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Catherine Grason, Director of Regulatory Affairs, Maryland Insurance Administration, 200 St. Paul Place, Ste. 2700, Baltimore, Maryland 21202, or call 410-468-2201, or email to insuranceregreview.mia@maryland.gov, or fax to 410-468-2020. Comments will be accepted through February 8, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 16
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No additional funds are necessary to implement these regulations.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The only businesses which may be impacted by these regulations are insurers issuing annuities in Maryland. There are no insurers in Maryland who qualify as small businesses that would be affected by these proposed amendments.

G. Small Business Worksheet:

Attached Document:

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 15 UNFAIR TRADE PRACTICES

Chapter 04 Solicitation of [Annuity and] Deposit Fund Contracts

Authority: Insurance Article, §§2-109 and 27-202, Annotated Code of Maryland

.01 Unfair Trade Practice.

The solicitation or sale of [annuities or] deposit fund contracts not in conformity with this chapter shall be deemed an Unfair Trade Practice in violation of Insurance Article, Title 27, Annotated Code of Maryland.

.02 Purpose.

A. The purpose of this chapter is to require insurers to deliver to prospects for [annuity contracts or for] deposit funds accepted in conjunction with life insurance policies or annuity contracts, information which helps the prospect select [an annuity or] a deposit fund[, or both,] appropriate to the prospect's needs, improves the prospect's understanding of the basic features of the plan under consideration and improves the prospect's ability to evaluate the relative benefits of similar plans.

B. (text unchanged)

.03 Scope.

A. To the extent provided here, this chapter shall apply to any solicitation, negotiation, or procurement of [annuity contracts or] deposit funds accepted in conjunction with individual life insurance policies or with annuity contracts [which are subject to this chapter,] occurring within this State. The chapter shall apply to an issuer of life insurance policies or annuity contracts including fraternal benefit societies.

B. This chapter shall apply to[:

(1) Individual deferred annuities other than:

(a) Variable annuities,

(b) Investment annuities; and

(2) [Deposit]deposit funds (that is, arrangements under which amounts to accumulate at interest are paid in addition to life insurance premiums or annuity considerations under provisions of individual life insurance policies or annuity contracts).

C. This chapter does not apply to:

[(1) Group annuity contracts whose cost is borne in whole or in part by the annuitant's employer or by an association of which the annuitant is a member, provided the employer or the association bears all or part of the cost of the same or similar contracts insuring not less than ten employees or members. The cost of a contract may not be deemed to be borne by an annuitant's employer to the extent the annuitant's salary is reduced or the annuitant foregoes a salary increase.

- (2) Immediate annuity contracts.]
[(3)](1)-[(4)](2) (text unchanged)

.04 Contract Summary.

A. For the purposes of this chapter, "contract summary" means a written statement describing the elements of the [annuity contract and] deposit fund, including but not limited to:

(1) A prominently placed title as follows: STATEMENT OF BENEFIT INFORMATION. (This shall be followed by an identification of the [annuity contract or] deposit fund[, or both,] to which the statement applies.)

(2) (text unchanged)

(3) The full name and home office or administrative office address of the insurer which will [issue the annuity contract or] administer the deposit fund.

(4) The death benefits for the deposit fund[, and for the annuity contract during the deferred period, and the form of the annuity payout. In the case where a choice of annuity payout form is provided, this item shall show the payout options guaranteed and the form of annuity payout selected in §A(6), (7), and (9) of this regulation].

[(5)] A prominent statement that the contract does not provide cash surrender values if that is the case.

(6) The amount of the guaranteed annuity payments at the scheduled commencement of the annuity, based on the assumption that all scheduled considerations are paid and there are no prior withdrawals from or partial surrenders of the contract and no indebtedness to the insurer on the contract.

(7) Illustrative Annuity Payments.

(a) On the same basis as §A(6) of this regulation except for guarantees, illustrative annuity payments not greater in amount than those based on (i) the current dividend scale and the interest rate currently used to accumulate dividends under these contracts, or the current excess interest rate credited by the insurer, and (ii) current annuity purchase rates.

(b) A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than 2 months after the date of declaration shall be considered a current dividend scale or current excess interest rate.]

[(8)](5) For [annuity contracts or] deposit funds for which guaranteed cash surrender values at any duration are less than the total considerations paid, a prominent statement that this [contract or] fund may result in loss if kept for only a few years, together with a reference to the schedule of guaranteed cash surrender values required by [§A(9)(c)] §A(6)(b) of this regulation.

[(9)](6) The following amounts, when applicable, for the first 5 contract years and representative contract years thereafter sufficient to clearly illustrate the patterns of considerations and benefits, including but not limited to the 10th and 20th contract years and at least one age from 60 through 65 [or the scheduled commencement of annuity payments, if any, whichever is earlier]:

[(a)] The gross annual or single consideration for the annuity contract.]

[(b)] (a) (text unchanged)

[(c)] (b) The total guaranteed cash surrender value at the end of the year [or, if no guaranteed cash surrender values are provided, the total guaranteed paid-up annuity at the end of the year. Values for a deposit fund shall be shown separately from those for a basic contract.][(d)] (c) Total Illustrative Cash Value.

(i) The total illustrative cash value [or paid-up annuity] at the end of the year, not greater in amount than that based on [(aa) the current dividend scale and the interest rate currently used to accumulate dividends under these contracts or] the current excess interest rate credited by the insurer[, and (bb) current annuity purchase rates].

(ii) (text unchanged)

[(10)] (7)-[(11)] (8) (text unchanged)

B. The contract summary shall be a separate document. All information required to be disclosed shall be set out in such a manner as not to minimize or render any portion obscure. Any amounts which remain level for 2 or more contract years may be represented by a single number if it is clearly indicated what amounts are applicable for each contract year. [Amounts in §A(4), (6), (7), and (9) of this regulation shall, in the case of flexible premium annuity contracts, be determined either according to an anticipated pattern of consideration payments or on the assumption that considerations payable will be \$1,000 per year. If not specified in the contract, annuity payments shall be assumed to commence at age 65 or 10 years from issue, whichever is later.] Zero amounts shall be displayed as zero and may not be displayed as blank spaces.

.05 Disclosure Requirements.

A. The insurer shall provide to all prospective purchasers a contract summary before accepting [the applicant's initial consideration for the annuity contract, or in the case of a deposit fund, before acceptance of] the applicant's initial consideration for the associated life insurance policy or annuity contract, unless the [annuity contract or] associated life insurance policy or annuity contract for which the application is made provides for an unconditional refund period of at least 10 days or unless the contract summary contains such an unconditional refund offer, in which event the contract summary shall be delivered with or before the delivery of the [annuity contract or] associated life insurance policy or annuity contract.

B. (text unchanged)

.06 General Regulations.

A.-E. (text unchanged)

F. Sales promotion literature and contract forms may not state or imply that [annuity contracts or] deposit funds are the same as savings accounts or deposits in banking or savings institutions. The use of passbooks which resemble savings bank passbooks is prohibited.

.07 Failure to Comply.

A.–C. (text unchanged)

D. Any insurer, agent, representative, officer, or employee of an insurer who fails to comply with the requirements of this chapter shall be subject to such disciplinary action and penalties as may be appropriate under *the Insurance Article*, Annotated Code of Maryland. This action may include the suspension or revocation of the license of the insurer or of the agent or both. The Commissioner may also impose monetary fines [of \$100 to \$50,000 on an insurer and of \$25 to \$500 on an agent] *as set forth in the Insurance Article* for each offense. In addition, the Commissioner may order the insurer or the agent, or both, to make restitution to any person who has suffered financial injury or damage as a result of any violation of this chapter by the insurer or agent.

Chapter 15 Annuity Disclosure

Authority: Insurance Article, §§2-109 and 27-202, Annotated Code of Maryland

.01 Purpose.

A. *The purpose of this chapter is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education.*

B. *The chapter specifies the minimum information which must be disclosed, the method for disclosing the information, and the use and content of illustrations, if used, in connection with the sale of annuity contracts.*

C. *The goal of this chapter is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.*

.02 Applicability and Scope.

A. *This chapter applies to all group and individual annuity contracts and certificates except:*

(1) *Immediate and deferred annuities that contain no non-guaranteed elements;*

(2) *Annuities used to fund:*

(a) *An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA),*

(b) *A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,*

(c) *A governmental or church plan defined in Section 414 of the Internal Revenue Code,*

(d) *A deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or*

(e) *A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.*

(3) *Notwithstanding subsection A(2) of this regulation, this chapter shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by an insurance producer solely for the purpose of educating or enrolling employees in the plan or arrangement;*

(4) *Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).*

(5) *Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, provided that compliance with Regulation .05 shall be required upon the effective date of this Chapter, unless, or until such time as, the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.*

(6) *Structured settlement annuities;*

(7) *Charitable gift annuities; and*

(8) *Funding agreements.*

B. *Notwithstanding subsection A(5) of this regulation, the delivery of the Buyer's Guide is required in sales of variable annuities, and when appropriate, in sales of other registered products.*

C. *Nothing in this section shall limit the Commissioner's ability to enforce the provisions of this chapter or to require additional disclosure.*

.03 Definitions.

A. *In this chapter, the following terms have the meanings indicated.*

B. *Term Defined.*

(1) "Buyer's Guide" means the National Association of Insurance Commissioners' approved annuity buyer's guide applicable to the contract under consideration.

(2) "Charitable gift annuity" means an agreement described in Insurance Article, §16-114, Annotated Code of Maryland between an educational or religious organization, hospital, or community foundation and one or more donors for annuity payments.

(3) "Commissioner" means the Maryland Insurance Commissioner.

(4) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(5) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

(6) "Funding agreement" means a contract described in Insurance Article, §16-113, Annotated Code of Maryland, whereby an insurer may accept and accumulate funds and make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated, such as "single premium deferred annuity."

(8) **Guaranteed Elements.**

(a) "Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed or have determinable elements at issue.

(b) An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Illustration" means 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.

(10) "Insurance Producer" has the meaning stated in Insurance Article, § 1-101(u), Annotated Code of Maryland.

(11) "Insurer" has the meaning stated in Insurance Article, § 1-101(v), Annotated Code of Maryland.

(12) "Market Value Adjustment" or "MVA" feature means a positive or negative adjustment that may be applied to the account value and/or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company's current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

(13) **Non-Guaranteed Elements.**

(a) "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue.

(b) An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

(14) "Registered product" means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(15) "Structured settlement annuity" has the meaning stated in Insurance Article, §9-401(n), Annotated Code of Maryland.

.05 Standards for the Disclosure Document and Buyer's Guide.

A. Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in § C of this regulation and the Buyer's Guide, if any.

B. Applications Taken in Other Than Face-to-Face Meetings.

(1) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer's Guide no later than 5 business days after the completed application is received by the insurer.

(2) With respect to an application received as a result of a direct solicitation through the mail:

(a) Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than 5 business days after receipt of the application.

(b) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than 5 business days after receipt of the application.

(3) With respect to an application received via the Internet:

(a) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than 5 business day of receipt of the application.

(b) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than 5 business days after receipt of the application.

(4) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement:

(a) That the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide; or

(b) That the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

(5) Free Look Period.

(a) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty.

(b) The free look period required by subsection (5)(a) of this regulation shall run concurrently with any other free look provided under state law or regulation.

C. At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

(1) The generic name of the contract;

(2) The company product name, if different from the generic name of the contract;

(3) The form number of the contract;

(4) The fact that the product is an annuity;

(5) The insurer's legal name, physical address, website address and telephone number;

(6) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate;

(a) The guaranteed and non-guaranteed elements of the contract, and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spread, and an explanation of how they operate;

(b) An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed;

(c) Periodic income options both on a guaranteed and non-guaranteed basis;

(d) Any value reductions caused by withdrawals from or surrender of the contract;

(e) How values in the contract can be accessed;

(f) The death benefit, if available, and how it will be calculated;

(g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(h) Impact of any rider, including, but not limited to, a guaranteed living benefit or long-term care rider;

(7) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(8) Information about the current guaranteed rate or indexed crediting rate formula, if applicable, for new contracts that contains a clear notice that the rate is subject to change.

D. Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

.06 Standards for Annuity Illustrations.

A. An insurer or insurance producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this section and:

(1) Is clearly labeled as an illustration;

(2) Includes a statement referring consumers to the disclosure document and Buyer's Guide provided to them at time of purchase for additional information about their annuity; and

(3) Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of illustrations.

B. An illustration furnished to an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

C. The illustration shall not be provided unless accompanied by the disclosure document referenced in Regulation .05 of this chapter.

D. When using an illustration, the illustration shall not:

(1) Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(2) State or imply that the payment or amount of non-guaranteed elements is guaranteed; or

(3) Be incomplete.

E. Costs and fees of any type shall be individually noted and explained.

F. An illustration shall conform to the following requirements:

(1) The illustration shall be labeled with the date on which it was prepared;

(2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (for example, the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");

(3) The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;

(4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the contract is assumed to have been in force;

(5) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;

(6) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;

(7) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;

(8) 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.

(9) Non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;

(10) In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for 3 different scenarios:

(a) One to reflect historical performance of the index for the most recent 10 calendar years;

(b) One to reflect the historical performance of the index for the continuous period of 10 calendar years out of the last 20 calendar years that would result in the least index value growth (the "low scenario");

(c) One to reflect the historical performance of the index for the continuous period of 10 calendar years out of the last 20 calendar years that would result in the most index value growth (the "high scenario").

(11) The following requirements apply to the non-guaranteed illustrated values:

(a) The most recent ten calendar years and the last 20 calendar years are defined to end on the prior December 31, except for illustrations prepared during the first 3 months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;

(b) If any index utilized in determination of an account value has not been in existence for at least 10 calendar years, indexed returns for that index shall not be illustrated.

(c) If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least 10 calendar years, the allocation to the indexed account or accounts that have not been in existence for at least 10 calendar years shall be assumed to be zero;

(d) If any index utilized in determination of an account value has been in existence for at least ten calendar years but less than 20 calendar years, the ten calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;

(e) The non-guaranteed element(s), such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element or elements;

(f) If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:

(i) The allocation used in the illustration shall be the same for all 3 scenarios; and

(ii) The 10 calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option.

(g) The geometric mean annual effective rate of the account value growth over the 10 calendar year period shall be shown for each scenario;

(h) If the most recent ten calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of § H of this regulation, the most recent 10 calendar year historical period experience of the index shall be used for each subsequent 10 calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;

(i) The low and high scenarios:

(i) Need not show surrender values (if different than account values);

(ii) Shall not extend beyond 10 calendar years, and therefore are not subject to the requirements of § H of this regulation beyond § H(1)(a) of this regulation; and

(iii) May be shown on a separate page.

(j) A graphical presentation shall also be included comparing the movement of the account value over the 10 calendar year period for the low scenario, the high scenario and the most recent 10 calendar year scenario; and

(k) The low and high scenarios shall reflect the irregular nature of the index performance and shall trigger every type of adjustment to the index-based interest rate under the contract.

(l) The effect of the adjustments described in § F(11)(k) of this regulation shall be clear; for example, additional columns showing how the adjustment applied may be included.

(m) If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state;

(12) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (for example, "see page 1 for guaranteed elements");

(13) The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;

(14) The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;

(15) Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;

(16) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

(a) The benefits and values are not guaranteed;

(b) The assumptions on which they are based are subject to change by the insurer; and

(c) Actual results may be higher or lower.

(17) Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps or spreads for fixed indexed annuities;

(18) The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;

(19) Illustrations shall be concise and easy to read;

(20) Key terms shall be defined and then used consistently throughout the illustration;

(21) Illustrations shall not depict values beyond the maximum annuitization age or date;

(22) Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and

(23) Illustrations shall show both annuity income rates per \$1000.00 and the dollar amounts of the periodic income payable.

G. An annuity illustration shall include a narrative summary that includes the following unless provided at the same time in a disclosure document:

(1) A brief description of any contract features, riders or options, guaranteed and nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;

(2) A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;

(3) Identification and a brief definition of column headings and key terms used in the illustration;

(4) A statement containing in substance the following:

(a) For other than fixed indexed annuities:

"This illustration assumes the annuity's current nonguaranteed elements will not change. It is likely that they **will** change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information.";

(b) For fixed indexed annuities:

"This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index **will not** repeat historical performance, the non-guaranteed elements **will** change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information."; and

(5) Additional explanations as follows:

(a) Minimum guarantees shall be clearly explained;

(b) The effect on contract values of contract surrender prior to maturity shall be explained;

(c) Any conditions on the payment of bonuses shall be explained;

(d) For annuities sold as an individual retirement annuity (IRA), qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained;

(e) For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur; and

(f) A brief description of the types of annuity income options available shall be explained, including:

(i) The earliest or only maturity date for annuitization (as the term is defined in the contract);

(ii) For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age 70 or 10 years after issue, but in no case later than the maximum annuitization age or date in the contract;

(iii) For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and

(iv) The periodic income amount based on the currently available periodic income rates for the annuity income option in item (ii) or item (iii) of this subsection, if desired.

H. Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

(1)(a) First 10 contract years; or

(b) Surrender charge period if longer than 10 years, including any renewal surrender charge period or periods;

(2) Every 10th contract year up to the later of 30 years or age 70; and

(3) One of the following:

(a) Required annuitization age; or

(b) Required annuitization date.

I. If the annuity contains a market value adjustment the following provisions apply to the illustration:

(1) The MVA shall be referred to as such throughout the illustration;

(2) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;

(3) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;

(4) A statement, containing in substance the following, shall be included:

“When you make a withdrawal the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.”

(5) Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment;

(6) The illustrative effect of the MVA shall be:

(a) Shown under at least one positive and one negative scenario;

(b) Shall appear on a separate page; and

(c) Clearly labeled that it is information demonstrating the potential impact of a MVA;

(7) Actual MVA floors and ceilings as listed in the contract shall be illustrated; and

(8) If the MVA has significant characteristics not addressed by subsections I(1) – I(6) of this regulation, the effect of such characteristics shall be shown in the illustration.

J. A narrative summary for a fixed indexed annuity illustration shall also include the following unless provided at the same time in a disclosure document:

(1) An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:

(a) The Index or indexes which will be used to determine the index-based interest;

(b) The Indexing Method – such as point-to-point, daily averaging, or monthly averaging;

(c) The Index Term – the period over which indexed-based interest is calculated;

(d) The participation rate, if applicable;

(e) The cap, if applicable; and

(f) The spread, if applicable;

(2) The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;

(3) The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and

(4) If the product allows the contract holder to make allocations to a declared-rate segment, then the narrative shall include a brief description of:

(a) Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and

(b) Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.

K. A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:

(1) The assumed growth rate of the index in accordance with § F(10)—F(11) of this regulation;

(2) The assumed values for the participation rate, cap and spread, if applicable; and

(3) The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with § F(10)—F(11) of this regulation.

L. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including, but not limited to changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue Code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for, will not require a revised illustration unless requested by the applicant.

.07 Report to Contract Owners.

For annuities in the payout period that include non-guaranteed elements, and for deferred annuities in the accumulation period, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

- A. The beginning and end date of the current report period;*
- B. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;*
- C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and*
- D. The amount of outstanding loans, if any, as of the end of the current report period.*

.08 Penalties.

A. In addition to any other penalties provided by the laws of this State, an insurer or insurance producer that violates a requirement of this chapter shall be subject to such disciplinary action and penalties as may be appropriate under Insurance Article, Title 27, Annotated Code of Maryland.

B. The action described in § A of this regulation may include the suspension or revocation of the license of the insurer or of the insurance producer or both.

C. In addition to the actions described in §§ A and B of this regulation, the Commissioner may:

- (1) Impose monetary fines for each offense; and*
- (2) Order the insurer or the insurance producer, or both, to make restitution to any person who has suffered financial injury or damage as a result of any violation of this chapter by the insurer or insurance producer.*

.09 Severability

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the chapter and its application to other persons or circumstances shall not be affected.

.10 Recordkeeping.

A. Insurers or insurance producers shall maintain or be able to make available to the Commissioner records of the information collected from the consumer and other information provided in the disclosure statement, including illustrations, for three years after the contract is delivered by the insurer.

B. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

C. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.