Maryland General Assembly
Department of Legislative Services

Proposed Regulation
Maryland Insurance Administration

(DLS Control No. 15-401)

Overview and Legal and Fiscal Impact

The regulations correct an erroneous cross-reference to a defined term contained in the Insurance Article and clarify that, with respect to annuity contracts that provide for payments varying directly with the investment experience of a segregated asset account, the maximum asset deduction charge which an insurer may make for investment expenses and annuity mortality guarantees applies only to individual, and not group, annuity contract accounts.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Insurance Administration:

Life Insurance and Annuities: Contracts on a Variable Basis:
COMAR 31.09.04.02 and .08

Legal Analysis

Summary of Regulations

COMAR 31.09.04 governs the issuance and delivery in the State of "contracts on a variable basis," defined in Regulation .02B(1) as annuity contracts that provide for payments that vary directly with the investment experience of a segregated asset account (variable contracts). By contrast, "fixed annuity contracts," as defined in Regulation .02B(2), are annuity contracts that provide for payment of fixed dollar amounts guaranteed in the contracts. Regulation .08 governs administrative and accounting procedures that must be followed by insurers issuing variable contracts, including the establishment under § L of a 1.5% maximum asset deduction charge for investment expenses and annuity mortality guarantees that an insurer may make against a variable contract account.

Both of the definitions contained in current Regulation .02B(1) and (2) incorporate the definition of "annuity contract" found in "§ 1-101(f)" of the Insurance Article. The regulations substitute a cross-reference to "§ 1-101(e)" of the Insurance Article for the existing cross-reference to "§ 1-101(f)" to reflect the renumbering enacted by Chapter 731 of 2001. The regulations also clarify that the 1.5% maximum asset deduction charge established under Regulation .08L applies only to contract accounts for individual, and not group, variable contracts. According to the Maryland Insurance Administration, the cost to administer a small group plan contract, at lower asset values, costs more than the current 1.5% limit and more than what it costs to administer a large group plan contract, thereby limiting competition among small group contracts and product options for small group employers. The administration also notes that a group annuity purchase, as opposed to an individual annuity purchase, is typically a commercial transaction between businesses, and therefore the regulatory restrictions for group annuity contracts should be more flexible than for individual annuity contracts. According to the administration, the change made in Regulation .08L will increase consumer choices in the group variable annuity contract marketplace.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The administration cites §§ 2-109 and 16-601 through 16-603 of the Insurance Article as statutory authority for the regulations. More specifically, §§ 2-109(a)(1) and 16-601(a)(2), (b), and (c) provide authority for the regulations. The remaining cited authority is not relevant to these 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 16-601(a)(2) authorizes the issuance, by stock insurers and mutual insurers, of individual and group variable annuity contracts that provide for payment varying directly with the investment experience of a segregated asset account under specified circumstances. Section 16-601(b) requires a stock insurer or mutual insurer to comply with regulations adopted by the Commissioner as a condition to being authorized to issue variable contracts, and § 16-601(c) authorizes regulations adopted by the Commissioner to include specified requirements and any "other requirements that the Commissioner considers appropriate to safeguard the interests of variable contract holders, other policyholders, insurers, and the public."

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

Technical Corrections and Special Notes

After submitting the regulations to the Joint Committee on Administrative, Executive, and Legislative Review, the administration submitted to counsel for the committee a revised Statement of Purpose that clarifies the reason for limiting the maximum asset deduction charge under Regulation .08L to contract accounts for individual variable annuity contracts. The administration has indicated the revised Statement of Purpose will be included in the version of the regulations published in the *Maryland Register*.

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.

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