



State of New Jersey
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STEVEN M. GOLDMAN
Commissioner

BULLETIN NO. 09-12

TO: ALL LIFE INSURANCE COMPANIES AND FRATERNAL BENEFIT SOCIETIES TRANSACTING BUSINESS IN NEW JERSEY

FROM: STEVEN M. GOLDMAN, COMMISSIONER

RE: INDIVIDUAL FIXED DEFERRED AND IMMEDIATE ANNUITY FORM FILING AND SUITABILITY NOTICE REQUIREMENTS

P. L. 2008, Chapter 88 (the "Act"), was approved September 19, 2008 and became effective on April 1, 2009. The Act provides marketing, information disclosure, and product suitability requirements for all current and future issues of individual fixed deferred and immediate annuity contracts solicited directly to consumers. Among other things, the Act requires the Commissioner of Banking and Insurance ("Commissioner") to approve an annuities buyer's guide and the standard form of an annuity contract disclosure statement to be used by an insurance agent or insurer in the solicitation, negotiation or sale of an annuity. The Act also requires those selling these products to make reasonable efforts to obtain and record information about the suitability of the product for the solicited consumer and the consumer's acknowledgement of the information recorded. On March 9, 2009, the Department issued [Bulletin 09-06](#) advising insurers of the Act's requirements and providing guidance on compliance with it. The Department has received comments and questions about the Act and Bulletin 09-06, some of which are of general interest to insurers. Accordingly, the Department is issuing this Bulletin to further clarify its interpretation of the applicability of the Act. The information contained in Bulletin 09-06 remains in effect, and is not repeated here. Bulletin 09-06 can be found on the Department's website at www.njdobi.org by clicking on "Insurance," and "Bulletins, Rules and Notices" under "Regular Features."

April 1, 2009 Effective Date

Although we encourage immediate action to carry out the legislative intent, until the rules are adopted and the buyer's guides and annuity contract disclosure statements have been approved by the Department, it will not be possible for insurers to distribute or make available to consumers "approved" versions of those documents as referenced in the law. Nevertheless, until the rules are in effect as a matter of good public policy the free look provision, buyer's guide and disclosure statement that are included in or accompany individual fixed deferred and immediate

annuity forms provided to consumers should include the provisions required by the Act and detailed in Bulletin 09-06.

With respect to the suitability notice, as was noted in Bulletin 09-06 the form of this notice is to be prescribed by, but does not require the approval of the Commissioner. Until the rules are adopted, insurers should be guided by the statements in that Bulletin regarding the information to be included in such notices on individual fixed deferred and immediate annuity contracts sold directly to consumers. As part of the rules that will be proposed, the Department will promulgate standards with respect to the content of such notices consistent with those statements. Pending adoption of the rules, producers and insurers may utilize suitability notices they currently provide and supplemental pages containing any information required by the Act that is not included in such notices. In that regard, insurers and producers should note that the law requires “reasonable grounds” for believing that the annuity is suitable for the consumer and provides that reasonable grounds “shall be based upon all relevant information and circumstances of the consumer actually obtained or known, and recorded, during the time of any negotiation or offer of sale on the annuity.”

The law also requires the consumer to acknowledge receipt of notice that the sale and suitability of annuities is regulated by the Department and of information on how to contact the Department. This signed acknowledgement may be a supplement to the suitability form, both of which should be retained by the insurance producer, non-licensed society agent, representative or member or insurer who is selling the annuity product to the consumer. The responsibility for who retains copies of the suitability form and acknowledgement by the consumer may depend upon the marketing channels used and should be a part of written procedures concerning the negotiation and sale of annuities that are contained in the system of supervision required pursuant to N.J.S.A.17B:25-38.

Variable Annuities

Pursuant to N.J.S.A.17B:25-37.4.a.(2), variable annuities subject to the provisions of N.J.S.A.17B:28-1 et seq. are not subject to the Act.

Immediate Annuity Disclosure Statement

A disclosure statement for use with immediate annuities should follow the format of the Sample Fixed Annuity Disclosure for use in New Jersey as shown in Example 1B of Attachment A of Bulletin 09-06. This disclosure should be revised as appropriate to reflect provisions for an immediate annuity. In any event, the disclosure statement similar to that for fixed annuities should include, but not be limited to the requirements listed at N.J.S.A.17B:25-37.4.c. (1) and (2).

Expedited Review

The Department will provide an expedited review of new or revised form filings as mentioned in Bulletin 09-06. Also, to assist in an expedited review, if the free look provision, buyer’s guide and disclosure statement are not being submitted at the same time, the submission should indicate whether they have been previously submitted or approved by the Department and

provide the submission number(s) and filing dates, if any. All such filings submitted on or after April 1, 2009 must be accompanied by or include a Buyer's Guide and Disclosure Statement that contain the required elements specified in the Act as noted in Bulletin 09-06.

Questions concerning form requirements, the Buyer's Guide and Disclosure Statement may be addressed to Reginald Young, Chief, Life Bureau, 609-292-5427 x50342 or by email at reginald.young@dobi.state.nj.us. Questions on the Suitability Notice should be directed to Anne Marie Narcini, Manager, Consumer Protection Services, at 609-292-5316 x50180 or by email at annemarie.narcini@dobi.state.nj.us. This Bulletin also appears on the Department's website at www.njdobi.org.

04/20/09
Date

/s/ Steven M. Goldman
Steven M. Goldman
Commissioner

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