

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF LIFE AND HEALTH

Actuarial Services

Life/Health/Annuity Forms; Standards for Individual Life Insurance Policy Forms; Individual Annuity Contract Form Standards

Proposed Amendments: N.J.A.C. 11:4-40.2 and 43.3

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17B:25-18.g.

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

Proposal Number: PRN 2006-337

Submit comments by December 15, 2006 to:

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The agency proposal follows:

Summary

The Life and Health Insurance and Health Maintenance Organization Form Approval Reform Act ("the Act") (P.L. 1995, c. 73; codified as N.J.S.A. 17B:25-18 et seq.), signed into law on April 10, 1995, requires all life and health insurance policies and contract forms, all annuities and all variable contracts subject to Title 17B of the New Jersey statutes to be filed with and approved by the Commissioner of the Department of Banking and Insurance (Commissioner). N.J.S.A. 17B:25-18g allows the Commissioner to exempt from filing any insurance form or type of document, the filing of which is, in his opinion, not desirable or

necessary for the protection of the public. At this time the Department proposes to exempt from the form filing requirements individual annuity contracts issued in the structured settlement market, and individual variable life policies and individual variable annuity contracts issued as private offerings to an “accredited investor” as set forth in Rule 501 of Regulation D under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., as amended, or a “qualified purchaser” as set forth in Section 2 (a)(51) of the Investment Company Act of 1940.

Effective November 5, 2001, the Department amended N.J.A.C. 11:4-40.3 to exempt from filing all annuities other than individual contracts and synthetic guaranteed investment contracts. The exemption included group annuity forms issued in the structured settlement market. See 35 N.J.R. 2197(a).

Structured settlement annuities are contracts purchased by an insurer or an obligor for the purpose of funding defined periodic payments pursuant to a court order or an out of court settlement of a tort liability claim. The terms and conditions of the annuity are structured to meet the conditions of the specific claim, drafted on a per case basis to reflect only the terms of that specific claim. The Department has now determined that structured settlement annuities, issued on either an individual basis or a group basis, should be exempted from filing due to the manner in which the terms and conditions are pre-determined to fulfill a claim. Accordingly, the Department is now proposing to amend N.J.A.C. 11:4-40.3 to also exempt individual structured settlement annuity contract forms from the form filing process.

The Department is further proposing to amend N.J.A.C. 11:4-40.3 to exempt from filing individual variable life forms and individual variable annuity contracts that are sold exclusively as private offerings in the private placement market to accredited investors or qualified purchasers. Prospective purchasers must meet specific securities law requirements as defined in

Rule 501 of Regulation D of the Securities Act of 1933 and Section 2 (a) (51) of the Investment Company Act of 1940. These purchasers are affluent individuals with a high net worth who are financially sophisticated with a greater understanding of investments. These purchasers typically have access to advisors and other resources to analyze an investment decision and are in a position to evaluate the potential risks of an investment, including any liquidity restrictions imposed by the underlying funds and their managers. Contracts sold as private offerings in the private placement market are not registered with the Securities Exchange Commission and are sold with an offering memorandum instead of a prospectus. The Department believes that the Federal criteria imposed on the sale of these forms supersedes any benefits afforded the consumer through the form filing process.

The Department is also revisiting a prohibition on the use of a single individual life policy or annuity contract in both the field issue and home office issue scenarios. N.J.A.C. 11:4-41.8(a) and 43.3(d) prohibit the use of the same form for field issue and home office issue. The Department is now proposing to amend these provisions to permit the utilization of the same form in field issue and home office issue situations, as long as the contract terms are written so as to make the administrative aspect of the issuance and delivery process negligible.

The Department's proposed amendments include the following:

At N.J.A.C. 11:4-40.2, Definitions, a new paragraph defines a “private placement form.”

N.J.A.C. 11:4-40.3 is being amended to specifically exempt individual structured settlement annuity forms and private placement individual variable life insurance forms and individual variable annuity contracts from the filing requirements imposed by N.J.S.A. 17B:25-18 et. seq.

N.J.A.C. 11.4-41.8(a) and 43.3(d) are being amended to allow for the utilization of the same form for both field issue and home office issue.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2, governing rulemaking calendars.

Social Impact

These proposed amendments should have a favorable impact on insurers, policyholders and the Department. Insurers would be relieved of the administrative burden of filing individual structured settlement annuity and individual private placement forms with the Department, and will no longer have to develop and file a separate form for field issue contracts. Policyholders will be favorably impacted in that they may enter such contracts without the delay of a form filing process. The Department will not be required to use its limited resources conducting unnecessary reviews of these types of forms, thus enabling it to more effectively regulate other aspects of the insurance business.

Economic Impact

These proposed amendments should have a favorable economic impact upon insurers, policyholders and the Department. Insurer costs related to filing the forms with the Department will be eliminated, as will the Department's costs to review such forms. Speedier entry of such forms into the marketplace may be economically advantageous to policyholders as well as insurers. The allowance of one form for field issue and home office issue will also reduce the costs of filing for the submitting companies.

Federal Standards Statement

Except for the references in the proposed definition of “private placement form” to the definition of “accredited investor” in Rule 501 of Regulations D under the Securities Act of 1933, 15 U.S.C. §77b.(1) and to the definition of “qualified purchaser” set for in Section 1(a)(51) of the Investment Company Act of 1940, 15 U.S.C. §80a-2(a)(51), the proposed amendments do not contain standards or requirements that are the subject of any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that these proposed amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments have no impact on the agriculture industry.

Regulatory Flexibility Statement

These amendments directly impact life, health and annuity insurers. The Department believes that these proposed new and amended subchapters will apply to few, if any, “small businesses,” as the term is defined in the Regulatory Flexibility Act, N.J.S.A 2:14B-16 et seq. because the affected insurers do not employ fewer than 100 fulltime employees. Moreover, no additional reporting, recordkeeping or other compliance requirements are being imposed by these amendments. As a result, a regulatory flexibility analysis is not required because the

amendments expand an exemption from a form filing requirement and lift a prohibition on the use of a single form for both field issue and home office issue contracts.

Smart Growth Impact

The proposed amendments have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 40. LIFE/HEALTH/ANNUITY FORMS

11:4-40.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Private placement form” means an individual variable life insurance form or individual variable annuity form where the purchaser meets the definition of “accredited investor” set forth in Rule 501 of Regulation D under the Securities Act of 1933 15 U.S.C. §77b.(15) or “qualified purchaser” set forth in Section 2 (a)(51) of the Investment Company Act of 1940, 15 U.S.C. §80a-2(a)(51).

...

11:4-40.3 Life/health/annuity form approval standards

(a) - (b) (No change.)

(c) [Annuity contracts, other than individual contracts and synthetic guaranteed investment contracts,] **The following types of contracts and forms** are exempt from compliance with this subchapter[.] :

1. Annuity contracts, other than individual contracts and synthetic guaranteed investment contracts;

2. Annuity contracts used solely for structured settlements that are purchased by an insurer or an obligor for the purpose of funding defined periodic payments pursuant to a court order or an out of court settlement of a tort liability claim, or for periodic payments in settlement of a workers compensation claim; and

3. Individual variable life forms and individual variable annuity forms sold exclusively as private placement.

(d) (No change.)

11:4-41.8 Standards for field issue contracts

(a) Use of the same form for field issue and home office issue contract shall [not] be permitted **when the contract terms are written so as to make the difference in the administrative aspect of the issuance and delivery process negligible.**

(b) (No change.)

11:4-43.3 General requirements and prohibitions

(a) - (c) (No change.)

(d) An insurer shall [not] use the same form for field issue and home office issue contracts **when the contract terms are written so as to make the difference in the administrative aspect of the issuance and delivery process negligible.**

1. - 3. (No change.)

(e) – (g) (No change.)

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