

## INSURANCE LAW ALERT

JULY 2010

### **New Jersey Department Of Banking And Insurance Prohibits The Sale Of *Stranger-Originated* Annuities In New Jersey And Proposes Amended Regulations On Life Insurance And Annuity Advertising And On Disclosure And Suitability Requirements For Annuities Directly Solicited To Consumers**

**July 6 was a busy day for the New Jersey Department of Banking and Insurance (“the Department”).** The Commissioner issued (A) Bulletin No. 10-14 to all life insurance companies transacting business in New Jersey, prohibiting Stranger-Originated Annuities (“STOAs”); (B) proposed amendments to N.J.A.C. 11:2-23.5 (advertisement of life insurance and annuities and disclosure and suitability requirements for annuities directly solicited to consumers); and (C) proposed new rules to be codified at N.J.A.C. 11:4-59 (marketing information and disclosure and product suitability requirements for individual fixed deferred and immediate annuity contracts directly solicited to consumers).

#### **A. Prohibition Against Sale of STOAs**

Bulletin No. 10-14 (*see*: [www.state.nj.us/dobi/bulletins/blt10\\_14.pdf](http://www.state.nj.us/dobi/bulletins/blt10_14.pdf)), issued to all life insurance companies transacting business in New Jersey, prohibits Stranger-Originated Annuities (“STOAs”) and warns carriers that an insurance producer and/or an “investor” may offer a stranger a fee for the use of his identity as the measuring life, or annuitant, in a variable annuity. Consumers who are terminally ill or in extremely poor health are targeted for such transactions, where the annuities are, in effect, being used as wagering contracts that provide payment upon the death of the

vulnerable annuitant. Often a trust or organization is named as the beneficiary of the death benefit to hide the identity of the beneficiary. Based on the position that STOAs hurt contractholders and insurers because the wagering profits realized by the producers/investors will eventually be passed on to other contractholders in the form of higher annuity fees and/or weaker guarantees, the Department is encouraging companies to take a proactive stance in helping to eliminate STOAs.

The Department believes that it has appropriate statutory authority to eliminate STOAs without additional legislation or regulations. *See* N.J.S.A. 17B:25-34 *et seq.*, eff. April 1, 2009 (requires sellers of individual annuities 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). *See also* N.J.S.A. 17:29B-1 *et seq.* (prohibiting any person from engaging in unfair or deceptive acts or practices in the business of insurance); and N.J.S.A. 17:33A-1 *et seq.* (Insurance Fraud Prevention Act).

The Bulletin contains the Department’s recommendations to insurers on strengthening their monitoring practices and more easily detecting STOA transactions by considering additional measures.

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## **B. Life Insurance Annuity Advertising/ Disclosure and Suitability Requirements for Annuities Directly Solicited to Consumers**

Proposed amendments to N.J.A.C. 11:2-23.5 and proposed new rules to be codified at N.J.A.C. 11:4-59 (*see* [www.state.nj.us/dobi/proposed/prn10\\_130.pdf](http://www.state.nj.us/dobi/proposed/prn10_130.pdf)) address the advertisement of life insurance and annuities and the disclosure and suitability requirements for annuities directly solicited to consumers. These proposed new rules codify previously issued Department Bulletin Nos. 09-06 and 09-12 (March 20, 2009), which provided guidance for implementation of N.J.S.A. 17B:25-34, effective April 1, 2009, addressing marketing information and disclosure and product suitability requirements for individual fixed deferred and immediate annuity contracts directly solicited to consumers. The proposal requires that the Buyers Guide on annuities, which must be provided to consumers pursuant to N.J.S.A. 17B:25-37b, now be provided within the time frames set forth at N.J.S.A. 17B:25-37d(1) or (2), as applicable. It further requires utilization of the Buyers Guide to fixed deferred annuities approved by the NAIC, with modifications to reflect the ten-day cancellation period for consumers at N.J.S.A. 17B:25-39, as well as the maximum fifteen-day cancellation period applicable under N.J.S.A. 17B:25-37d(3) when the Buyers Guide and disclosure statement are not timely provided to consumers.

Proposed N.J.A.C. 11:4-59.4 sets forth the requirements for the annuity contract disclosure statement to be distributed to a consumer pursuant to N.J.S.A. 17B:25-37c. The proposal also provides that the disclosure statement form to be used with an annuity shall be filed with the Department as part of the filing of an annuity form pursuant to N.J.A.C. 11:4-40. For contract forms previously approved, the insurer must file a copy of a compliant disclosure statement that it complies with the rule that it is to be utilized with that form no later than 180 days from the effective date of the proposed rules. For such applications where the insurer fails to timely file a compliant disclosure statement for use with a previously approved annuity form, the approval form will be deemed withdrawn.

Proposed N.J.A.C. 11:4-59.5 provides for supplemental information to be used for purposes of determining suitability of an annuity, including, but not limited to:

- **Age**
- **Annual income**
- **Financial status**
- **Financial experience and investment objective**
- **Intended use of the annuities.**

These factors are included in the most recent draft amendments to the NAIC Suitability In Annuities Transactions Model Regulation.

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Proposed new rules at N.J.S.A. 17B:25-38b(2)(e) also require that a consumer sign a form acknowledging receipt of notice that the solicitation, negotiation and sale of the annuity and its suitability are subject to the regulatory oversight of the Department, and of information on how to contact the Department's Consumer Assistance Services. The signed acknowledgement may be a supplement to the suitability form. Both forms shall be retained by the insurance producer, non-licensed society agent, representative, or member of the insurer who is directly selling the annuity product to the consumer.

Procedures when the consumer refuses to provide the relevant information to determine the suitability of the solicited product and/or the consumer's signature on the suitability form and/or acknowledgement are also within the proposed regulations. They also obligate the insurer to provide the consumer copies

of the form that the consumer signed or on which the consumer's refusal to sign was noted.

Proposed N.J.A.C. 11:4-56 implements the requirements of N.J.S.A. 17B:25-38c(1), (2) and (3) that insurers: (i) establish and maintain with a third party a system of supervision or contract; (ii) require the retention of the acknowledgement of the receipt of the notice by the consumers; and (iii) mandate periodic review of information and written procedures as necessary to detect and prevent violations of the law. ■

*For more information about any of the topics covered in this issue of the Insurance Law Alert, please contact:*

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