Fields of Opportunities

STATE OF IOWA

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COMMISSIONER OF INSURANCE

BULLETIN 13-01

To: Persons Licensed to Sell Annuities in Iowa

From: Nick Gerhart, Iowa Insurance Commissioner

Re: Annuity Illustrations (191 Iowa Administrative Code 15.61-69)

Date: April 3, 2013

I. Introduction

Iowa recently adopted rules providing standards for the disclosure of certain minimum information to consumers considering the purchase of annuity contracts (191 Iowa Administrative Code rules 15.61-15.69).These rules became effective April 11, 2012, and apply to certain annuities issued after January 1, 2013. Since the adoption of these rules, questions have arisen as to interpretation and application of parts of these rules. This Bulletin provides guidance to insurers and producers.

This Bulletin supersedes prior memos and related e-mail. The references in this Bulletin are to 191 Iowa Administrative Code rules.

Any specific waiver request of 191 Iowa Administrative Code rules 15.68-15.73 must be filed in accordance with 191 Iowa Administrative Code rules 4.21-4.36.

Questions concerning this Bulletin or the rules may be sent to Rosanne Mead at the Insurance Division (rosanne.mead@iid.iowa.gov).

II. Implementation of 191 Iowa Administrative Code 15.61-15.69

A. **Rule 191 IAC 15.64**. **Buyer's Guide**. The NAIC currently is working on a new annuity Buyer's Guide. It is anticipated that it will be adopted at the NAIC meeting in April. The IID will monitor this process and set a deadline for insurers to begin using the new Buyer's Guide. In the interim, companies may use the current Buyer's Guides for sales of fixed annuities. For the sale of variable annuities, a Buyer's Guide need not be provided until the IID has announced a deadline for use of the new Buyer's Guide. Once implemented, the new NAIC model annuity Buyer's Guide should be used for sales of variable annuities. It can be used for variable annuities until a specific Buyer's Guide is developed for variable annuities.

B. **Rule 191 IAC 15.65. Content of disclosure documents.** This rule took effect January 1, 2013, and insurers should be in compliance at this time.

C. **Rule 191 IAC 15.66. Standards for annuity illustrations.** Prior to July 1, 2013, the IID will investigate any apparent violation of the new annuity illustration rules, and will determine whether the insurer under investigation made a good faith effort to comply with the new rules. Companies shall be in full compliance with the rules on and after July 1, 2013.

D. In-Force Business. If an existing annuity was issued for delivery in Iowa, the Iowa rules apply. If an annuity issued to an Iowa resident was issued for delivery in another state, the Iowa rules would not apply unless there is a deliberate attempt to circumvent the Iowa rules.

III. General Principles

A. Illustrations are to be used to demonstrate how the product works, and not to be used to compare two products against each other except as to how the contract features work.

B. Annuity illustrations are optional. The decision of whether or not a particular annuity contract will be illustrated is made at the company level. An illustration may be prepared (1) by the insurer that issues the product illustrated, or (2) by a producer using software created by the insurer that issues the product illustrated. A producer may design an illustration, but may not use it without the approval of the company that issues the product illustrated. Each company is responsible for monitoring the illustrations used by its producers.

C. These rules apply only to illustrations as defined in 191 IAC 15.63. For something to be an illustration, three elements must be present:

1. A personalized presentation or depiction,

2. Prepared for and provided to an individual customer, and

3. The presentation or depiction must contain the non-guaranteed elements of an annuity contract.

If any one of these three things is missing, it is not an illustration for purposes of these rules, and these rules do not apply. It is possible to present something that is not an illustration, *i.e.*, does not contain all three elements above. Whether information in a presentation is "personalized" is a question of fact.

D. Illustrations must be specific to the annuity contract.

E. Combining an illustration and a disclosure is permissible as long as the disclosure statement takes precedence over the illustration. The disclosure may not be unduly minimized. Duplication of information should be avoided to avoid confusion and unnecessary length.

F. To the extent that any of the definitions in rules 15.61 through 15.69 are in conflict with definitions used in 191 IAC Chapter 16. (Replacements), or the provisions of 191 IAC Chapter 15.3 (Advertising) the definitions in rules 15.61 through 15.69 shall govern annuity illustrations.

G. An illustration is considered to be "issued other than as applied for" when the illustration used at point of sale is substantially altered after the application is sent to the company and prior to contract issuance. In this event, a revised illustration must be issued. Mere premium or contributions changes do not constitute substantive changes requiring a new illustration. “Substantive” means affecting the way the contract works.

IV. Topical Guidance

A. **Delivery requirements.** The Division’s expectations for compliance with the delivery requirements of these rules are set forth above in section III.

B. **Insurers should track the values for each crediting method.** If a product has multiple crediting methods, an insurer must separately track the performance of each crediting method. The insurer need not show separate values for each available crediting method in the illustration. Only the crediting methods chosen by the contract owner must be shown.

C. **Allocations to more than one account.** If more than one index option is selected, the illustration, must display the values of each allocation option selected.

D. **Ten-year period.** If an annuity has an index-based crediting method longer than ten years, the insurer shall construct index values beyond the ten-year period by repeating the movements of the index during the ten-year period.

   For example, if index-based interest is calculated on a 12-year basis, the insurer should construct index values for end of year 11 and end of year 12 by applying the annual changes from years 1 and 2 to the end of year 10 index value. This approach will produce the same historical index environment as an annual crediting method that repeats the first ten years of index changes.

   An insurer may elect to use a geometric mean to project values to be used when illustrating products beyond ten years. Appropriate disclosures must be included.

E. **Illustration beyond age 70.** Depending on the age of the annuitant at the time of illustration, the requirements outlined in subrule 15.66(8) may appear to result in an illustration for a period past the annuitization date, which is an apparent violation of subrule 15.66(6)(s).

   The Division interprets subrules 15.66(6)(s) and 15.66(8) to mean the narrative summary should include values up to the later of 30 years or age 70, but should not extend beyond the maturity date. If the maturity date occurs before the later of 30 years or age 70, the narrative summary should stop at the maturity date.

   An illustration should not demonstrate values beyond a contract’s maximum annuitization date or its maturity date.

F. **Illustration of nonguaranteed elements statement required by subrule 15.66(6)(n)**. The required statement about nonguaranteed elements shall be contained in the narrative summary. The Division believes that a best practice would be to include the statement prominently below the illustrated values.

G. **Annuitization must be illustrated**. See subrules 15.66(6)(o), (s) & (t), 15.66(7)(a) and (e)(6).

H. **Subrule 15.66(6)(q) requires that illustrations be concise and easy to read.** There is no specific technical guidance on this subrule. The illustration should be reasonable in relation to the complexity of the product.

I. **Low and high scenarios under subrule 15.66(6)(i)(9).** The rule means that in any of the prescribed ten-year scenarios, the values should reflect at least one index-based interest rate at the floor and at least one index-based interest rate that is less than the full index value increase (as limited by the contract language, if any, such as a cap, participation rate or spread.) If this does not happen in any of the prescribed scenarios the narrative should explain what could happen.

J. **Market value adjustment (MVA)**. Subrule 15.66(9)(f) requires that a positive and negative scenario be shown. A flat scenario is not considered a positive scenario.

K. **Presentation without illustration.** According to the definition of "illustration" in rule 15.63, as long as only guaranteed elements are used, a producer may use a company-approved generic brochure to explain the benefits of a contract, but the producer may not show numbers that illustrate nonguaranteed elements.

   Hypothetical generic examples are permitted. The Division will review the use of such examples to determine whether the item was used in its original form or if it was altered. If altered, there will be a question of fact whether the alteration created a personalized document which could be considered to be an illustration.

L. **Oral statements.** A producer may not verbally do what is not permitted by the rules. An oral presentation of personalized values is an illustration and is subject to the regulation.

M. **Terms.** Terms such as "projection" or "calculator" may be used in an illustration.

N. **Surrender Value**. If the amount of a policy's surrender value is different than the account value, both surrender value and account value must be shown in an illustration. Surrender values need not be shown for the low and high ten-year scenarios.

O. **Portrayal of periodic income options**. The annuity option required under subrule 15.66(7)(e)(6) must constitute a personalized depiction.

P. **Comparison of products.** Illustrations are not intended to be used to compare products except as to how the contract features work. It is not appropriate to use illustrations to compare the earnings on products. Insurers and producers must use caution in presenting illustrated and non-illustrated products together.

Q. **Violations.** Violations of the rule on illustrations will be considered unfair trade practices and will be prosecuted under Iowa Code Chapter 507B (2013). *See* rule 15.68.

R. Use of internet materials. If illustrations or documents from the internet are used for sales in Iowa, Iowa law applies.

S. Appendix V. This is only an example of an illustration. It demonstrates how information can be shown. There is no requirement that illustrations have to be exactly like Appendix V. If information is required by the rules to be included, then that information should be included. If a product has attributes which are not contemplated by these rules, paragraph 15.66(9)(h) requires that a description must be included. An illustration may not show something that cannot happen. For example, if an interest rate has no room to go down, the illustration should not show an interest rate below what the contract provides.

T. Account value vs. index value method. The low and high ten-year scenarios should be determined based on lowest and highest index value growth, not account value growth. If the most recent ten-year scenario is also the high or low scenario, the scenario need only be included once but must be clearly labeled as to what it represents.

The high 10-year scenario should be the same for all insurers for each index (e.g. S&P 500), regardless of the index-based crediting methods, caps, spreads, participation rates, etc. (See IAC 191 15.6(6)(i)(5)(2)).

Although unlikely, it is mathematically possible that a low scenario determined using the index value method could result in higher account values than the account values in the high scenario. The Division considered this fact, but ultimately rejected the account value method due to its complexity and due to the language of the model regulation/rule found at Iowa rule 191 15.6(6)(i)(5)(2)). Under the account value method, cap changes could cause low and high periods to shift. The index value method is simpler for systems calculations (since the low and high scenarios for each index are determined only once per year), easier for regulators to review (since all insurers use the same time periods for each index), and more easily understood by the consumer.

U. Modal Premiums. If a buyer elects to pay premiums other than annually, the illustration must show annual values.