State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF THE COMMISSIONER
PO BOX 325
TRENTON, NJ 08625-0325

RICHARD J. CODEY
Acting Governor

TEL (609) 292-5360

DONALD BRYAN
Acting Commissioner

BULLETIN NO. 05-18

TO: **ALL NEW JERSEY LICENSED LIFE INSURANCE COMPANIES AND FRATERNAL BENEFIT SOCIETIES**

FROM: **DONALD BRYAN, ACTING COMMISSIONER**

RE: **P.L. 2005, C. 45 -- SURRENDER CHARGES FOR INDIVIDUAL DEFERRED ANNUITIES**

P.L. 2005, c. 45, the Senior Citizen Investment Protection Act (Act), was approved March 21, 2005 and became effective on June 19, 2005. The Act amends N.J.S.A. 17B:25-20, the Standard Nonforfeiture Law for Individual Deferred Annuities, and affects the nonforfeiture values and surrender charges of individual annuity contracts subject to the Standard Nonforfeiture Law. On June 10, 2005, the Department issued Bulletin No. 05-12 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 05-12, 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 05-12 remains in effect, and is not repeated here. Bulletin 05-12 can be found on the Department's website at www.state.nj.us/dobi by clicking on "Insurance," and "Bulletins, Rules and Notices" under "Regular Features."

Annuities with Renewable Guarantee Period and Surrender Charges ("CD Annuities")

Some deferred annuities offer a guaranteed interest rate for a period of more than one year. Surrender charges are imposed, but are zero at the end of the guarantee period. An additional, subsequent guarantee period can be obtained with a new scale of surrender charges.

The surrender charges under such contracts are limited by the Act. The Act would appear to prohibit the renewal of a guarantee period, and the imposition of a new surrender charge for that period after the maturity date (the later of age 70 or 10 years from the payment of a premium). The Department has determined, however, that under certain circumstances the election of a new guarantee period could be considered the payment of a new premium. Consequently, the renewal of the guarantee period and surrender charge will not be considered a violation of the Act if all of the following are satisfied:

1. Surrender charges are zero at the end of the guarantee period, and remain zero for a period of at least 30 days;
2. The contractholder has the option to continue the contract without surrender charges;
3. The continuation of the contract without surrender charges is the default option; the contractholder must elect to have a new guarantee period with new surrender charges; and

4. The renewal guarantee period must be 10 years or less, and the scale of surrender charges must satisfy the Act, assuming a maturity date of the later of age 70 or 10 years from the renewal date.

Guaranteed Minimum Income Benefit (GMIB)

Variable annuities can provide a GMIB as an option to protect the annuitant from adverse investment experience by providing a guaranteed income, generally based on the original premium less withdrawals. For such annuities, the present value of the annuity benefit may exceed the cash surrender value if investment returns are adverse. This difference is not a violation of the Act because variable contracts are not subject to N.J.S.A. 17B:25-20.

Some variable annuities also provide an option to deposit funds in the insurer's general account. Pursuant to N.J.A.C. 11:4-44.3(d)1, such general account options are subject to the same rules as fixed annuities, including N.J.S.A. 17B:25-20. Accordingly, a variable annuity with a GMIB could possibly violate the Act to the extent that a GMIB resulted in an annuity value greater than the cash value of the fixed account.

The Department has concluded that a GMIB in an annuity with a general account option does not violate the Act, since the violation would apply in only limited scenarios and would be immeasurable. A GMIB intended to protect against investment loss on variable accounts would be applicable to a general account option only to the extent that funds were originally in a variable account, or only to the extent that the GMIB applied to all accounts, including the fixed account.

N.J.S.A. 17B:25-18.4 ("40 States Law")

N.J.S.A. 17B:25-18.4 (the "40 States Law") permits a contract to be sold in New Jersey if it is approved or otherwise available for sale in 40 other states. The Department's rules at N.J.A.C. 11:4-40A set forth the permitted variations among states and, in the case of certain required provisions, stipulate the New Jersey form of the contract when there are likely differences among states. The Act preempts the 40 States Law regarding surrender charges after the maturity date. Surrender charges are not permitted after the maturity date even if such charges are permitted in a form available for use in 40 other states. However, this preemption does not extend to other features of the contract. Further, any fixed accounts of variable annuities filed under the 40 States Law are not subject to the Act because N.J.A.C. 11:4-43.4(d)1 does not apply to 40 States contracts.

Any questions regarding this Bulletin and the impact of the Act can be addressed to the Department's Office of Life and Health by FAX (609-633-0527) or phone (609-292-5427 x50340). Please identify all questions as being related to Bulletin 05-18 or the Senior Citizen Investment Protection Act.

8/17/05	/s/ Donald Bryan
Date	Donald Bryan
	Acting Commissioner

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