CARLTON FIELDS

Iowa Leads the Way Issuing Guidance on Annuity Illustrations

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April 5, 2013 -- On April 3, 2013, Iowa Insurance Commissioner Nick Gehart issued Iowa Insurance Department ("IID") Bulletin 13-01 providing guidance to insurers and producers who are licensed to sell annuities in Iowa on Iowa's annuity illustration and disclosure requirements. Bulletin 13-01 addresses questions as to interpretation and application of Iowa's adoption of the NAIC's 2011 revisions to the *Annuity Disclosure Model Regulation*. Some of the more notable questions addressed by Bulletin 13-01 are summarized below. *What Must Consumers Receive?* For the sale of all fixed annuities, except certain exempt annuities, consumers must receive a required disclosure document and the current NAIC Buyer's Guide. For the sale of all variable annuities, except certain exempt annuities, consumers must receive the new NAIC Buyer's Guide, which is anticipated to be adopted by the NAIC at its Spring National Meeting or, at the latest, its Summer National Meeting. Bulletin 13-01 did not address any requirements to use a disclosure document for variable annuities. *What are the Compliance Dates?* Fixed annuity illustrations used between January 1, 2013 and July 1, 2013, must reflect a good faith effort to comply with Iowa's illustration requirements. Beginning on July 1, 2013, the annuity illustrations must be in full compliance with Iowa's requirements. Once the NAIC adopts its new Buyer's Guide, the IID will announce a compliance date for use of the new Buyer's Guide. *What is an Illustration?* Bulletin 13-01 states that for something to be an illustration, three elements must be present:

- A personalized presentation or depiction.
- Prepared for and provided to an individual customer.
- The presentation or depiction must contain non-guaranteed elements of an annuity contract.

Thus, a brochure that contains hypothetical ***generic*** examples based on non-guaranteed elements would generally not be an illustration. However, Bulletin 13-01 warns that a brochure may become personalized if the presentation is annotated or altered for a particular customer. ***The IID will look to the facts and circumstances*** to determine if a presentation is personalized. This includes whether an oral presentation is an illustration. *How are the Low and High Scenarios Determined?* Bulletin 13-01 makes clear that the low and high scenarios are determined by the ***increase in the index*** used in the crediting option and ***not by the increase in account value*** allocated to the crediting option. In fact, Bulletin 13-01 states that for each index, the high 10-year scenario should be the same for all insurers. Thus, for example, all insurers that have an index crediting option based on the S&P 500® Index would use the same 10-year period for the high scenario. The IID asserts that this method was preferable because it is simpler for calculations, easier for regulators to review, and more easily understood by consumers. *How Many Years Can be Illustrated?* Iowa illustration requirements limit the period to be illustrated.

- Index-based crediting – The high and low scenarios must only be illustration for 10 years. Bulletin 13-01 acknowledged that for index crediting options that have terms longer than 10 years, the illustration may extend to the length of the term. However, in computing the illustrated values, only the ten year index value changes may be used and values would repeat. Thus, for an index option with a 12 year term, the 11th and 12th year would be based on the first and second year's index values.

- Illustrated values up to annuitization date – Iowa requires that illustrations may not extend beyond the annuitization date. Bulletin 13-01 clarifies that illustrations must stop at the earliest of:

a. The annuity contract's maximum annuitization or maturity date or b. The later of 30 years after issue date or the consumer's age 70. *When must a Revised Illustration be Issued?* Bulletin 13-01 clarifies that a revised illustration is not required if the only change is the amount of premiums. It notes that a revised illustration is required if there is a change impacting the "way the contract works." This suggests that an illustration is required if a rider, such as a guaranteed withdrawal rider, is either added or deleted, after the original illustration upon which the sale was made was given to the consumer. *Must Annuitization be Shown?* The Bulletin acknowledges that annuitization must be illustrated and points to the Iowa requirements on the disclosures for annuitizations.

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