

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE REPEALING AND
AMENDING RULES**

Rule No. 145:

To repeal s. Ins 2.14 (4) (g)1.; and to amend ss. Ins. 2.15 (3) (b) 1. and 2., 2.15 (4) (c), 2.15 (8), and 2.16 (3) (a) 2., Wis. Admin. Code.

Relating to:

Disclosure Requirements for Life Insurance and Annuity Contracts.

Prior approval and publication:

The statement of scope for this rule SS: 082-14, was approved by the Governor on August 18, 2014, published in Register No. 705, on September 14, 2014, and approved by the Commissioner on September 26, 2014.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. Statutes interpreted:

s. 628.34 (1) and (12), 628.38.

2. Statutory authority:

ss. 227.11 (2) (a), 601.41 (3), 628.34 (12), 628.38.

3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:

The statutory authority for these rules are s. 227.11 (2) (a), and 601.41 (3), Wis. Stats., which provide for the commissioner's rulemaking authority in general and specifically ss. 628.34 (12) and 628.38, Wis. Stats. Section 628.34 (12), Wis. Stat., states the commissioner "may define specific unfair trade practices by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or restrain competition unreasonably." Section 628.38, Wis. Stat., states the commissioner "may by rule require insurers to deliver to prospective buyers of life or disability insurance, at a time specified in the rule, information consistent with ss.601.01 and 628.34 that will improve their ability to select appropriate coverage."

4. Related statutes or rules:

ss. 628.34 (1).

5. The plain language analysis and summary of the proposed rule:

The purpose of the rule change is to update the buyer's guide that is furnished to Wisconsin consumers during the sale of annuities. Currently, the Wisconsin Buyer's Guide to Annuities is available online, and contains general product information and provides answers to basic

questions about risks and investing that consumers can use to decide whether these products are right for them. Unfortunately, the Wisconsin buyer's guide is outdated as it does not provide any information about indexed annuity products which are now common in the marketplace. In 2013, the National Association of Insurance Commissioners (NAIC) revised and updated the NAIC buyer's guide to include information about fixed, indexed and variable annuities. The NAIC now offers three versions of the Buyer's Guide for Deferred Annuities: a general information guide, a fixed annuity guide, and a variable annuity guide. OCI seeks to amend s. Ins 2.15 to permit insurers and agents to use the most current version of the applicable NAIC Buyer's Guide for Deferred Annuities, rather than the Wisconsin Buyer's Guide to Annuities. As a result of this change, the outdated Wisconsin Buyer's Guide to Annuities will be discontinued. Wisconsin adopted the NAIC Life Insurance Buyer's Guide in 1998. Using the NAIC guides for both life insurance and annuities will provide uniformity and consistency for insurers, agents and consumers. In addition, the delivery of the applicable Buyer's Guide will now be required in sales of variable annuities.

The purpose of amending Ins 2.16 (3) (a) 2. is to change the reference from "Wisconsin Buyer's Guide to Annuities" to "Buyer's Guide" so that Ins 2.16(3)(a)2. conforms with the amendments to Ins 2.15. This is a minor technical change to ensure consistent cross references in the Wisconsin Administrative Code.

The purpose of repealing Ins 2.14 (4) (g) 1. is to bring the rule up to date with a change in the law that occurred in 1998. The entire subdivision should be deleted because the sentence stating "Further explanation of the intended use of these indexes is provided in the life insurance buyer's guide" is incorrect as no such explanation is contained in the NAIC Life Insurance Buyer's Guide concerning cost indexes. The explanation was previously included in OCI's Life Insurance Buyer's Guide which was replaced with the NAIC Buyer's Guide by rule change in January, 1998. This is a minor technical change to the existing rule which does not encompass a change of existing policy with respect to the disclosure rules applicable to life insurance.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no existing or proposed federal regulations which are intended to address the annuity benefit solicitations to be regulated by the proposed rule.

7. Comparison of similar rules in adjacent states as found by OCI:

Iowa: Iowa Administrative Code r. 191-15.61 to 191-15.67 (2003/2012) adopts the National Association of Insurance Commissioner's (NAIC) approved Annuity Buyer's Guide as the Buyer's Guide to be used in Iowa. On October 21, 2013, addressing the updated 2013 versions of the Annuity Buyer's Guide, the Commissioner issued Iowa Insurance Bulletin 13-03 stating that the Buyer's Guide for Deferred Annuities-Fixed is acceptable in sales of fixed indexed annuities, the Buyer's Guide for Deferred Annuities-Variable is acceptable in sales of variable annuities, and the Buyer's Guide for Deferred Annuities (the combination guide) is acceptable in all instances.

Illinois: Illinois has not adopted disclosure rules for annuity benefit solicitations. To date there has been no formal adoption of language similar to the proposed rule.

Minnesota: Minnesota has not adopted disclosure rules for annuity benefit solicitations. To date there has been no formal adoption of language similar to the proposed rule.

Michigan: Michigan has not adopted disclosure rules for annuity benefit solicitations; to date there has been no formal adoption of language similar to the proposed rule.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The proposed rule is based upon model regulation and analysis of the proposed provisions by representatives of the insurance industry, trade associations, life insurance agents, and consumer organizations. The proposed rule will foster consistency and uniformity across state lines which will promote predictability in the annuity marketplace and enhance consumer protection through important disclosures.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

The amendment to s. Ins 2.15 will have a minimal additional cost for insurers and insurance agents. OCI does not charge insurers or agents for using the Wisconsin Buyer's Guide to Annuities. However, NAIC charges \$0.35 for each copy of a buyer's guide. This has been a consistent cost for using NAIC guides. The repeal of s. Ins 2.14 (4) (g) 1. and amendment of s. Ins 2.16 (3) (a) 2. are minor technical changes which should have no effect on small businesses.

10. See the attached Private Sector Fiscal Analysis.

See attached Fiscal Estimate and Economic Impact Analysis.

11. A description of the Effect on Small Business:

This rule does not impose any additional requirements on small businesses.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

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The proposed rule changes are:

SECTION 1. Ins 2.14(g)1. is repealed.

SECTION 2. Ins 2.15(3)(b)1. and 2. are amended to read:

Ins 2.15(3)(b) This section shall not apply to:

1. ~~Variable annuities~~ Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.);

2. ~~Contracts registered with the federal securities and trade commission~~ Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations;

a. Notwithstanding subdivision 2. above, the delivery of the applicable Buyer's Guide is required in sales of variable annuities and, when appropriate, in sales of other registered products.

b. Nothing in this subdivision will limit the Commissioner's ability to enforce the provisions of this regulation or to require additional disclosure.

SECTION 3. Ins 2.15(4)(c) is amended to read:

Ins 2.15(4)(c) ~~“Wisconsin Buyer’s Guide to Annuities” means the document which contains, and is limited to, the language set forth in Appendix I to this section. “Buyer’s Guide” means, for the purposes of this section, the National Association of Insurance Commissioner’s (NAIC) a dopted Annuity Buyer’s Guide which refers to:~~

1. For sales of fixed or fixed indexed annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred Annuities – Fixed”, dated 2013, as adopted by and available from the NAIC; or

2. For sales of variable annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred Annuities – Variable”, dated 2013, as adopted by and available from the NAIC.

SECTION 4. Ins 2.15(8) is amended to read:

Ins 2.15(8) DISCLOSURE REQUIREMENTS. (a) The insurer and its intermediaries shall provide, to all prospective purchasers of any contract or arrangement subject to this section, ~~a copy of the current edition of the Wisconsin Buyer’s Guide to Annuities~~ the applicable Buyer’s Guide and a properly completed Preliminary Contract Summary or Contract Summary prior to accepting the applicant’s initial consideration for the annuity contract, or, in the case of a rider or provision, prior to acceptance of the applicant’s initial consideration for the associated insurance policy or annuity contract. Insurers which do not market contracts through an intermediary may provide the Contract Summary, and the applicable Wisconsin Buyer’s Guide to Annuities at the point of contract delivery provided they:

1. Guarantee to the contractholder the right to return the contract for a full refund of premium any time during a 30 day period commencing on the date such contractholder receives the Contract Summary and the applicable Wisconsin Buyer’s Guide to Annuities;

2. Alert the prospective contractholder, in advertisements or direct mail solicitations, of his or her right to obtain ~~a copy of the applicable Wisconsin Buyer’s Guide to Annuities~~ and a Preliminary Contract Summary prior to the sale.

(b) The insurer and its intermediaries shall provide a Contract Summary upon delivery of the contract, if it has not been delivered beforehand;

(c) The insurer and its intermediaries shall provide ~~a Wisconsin~~ the applicable Buyer’s Guide to Annuities and a Contract Summary to individual prospective purchasers upon reasonable request;

(d) Any statement provided subsequent to sale to a contractholder which purports to show the then current value of an arrangement subject to this section shall show the then current guaranteed cash surrender value or, if no guaranteed cash surrender value is provided the then current guaranteed paid-up annuity.

SECTION 5. Ins 2.16(3)(a)2. is amended to read:

Ins 2.16(3)(a)2. Advertisement does not include a policy summary as defined in s. [Ins 2.14 \(3\) \(d\)](#), the "buyer's guide to life insurance" as set forth in s. [Ins 2.14](#), an illustration as defined in s. [Ins 2.17 \(3\) \(i\)](#), a contract summary as defined in s. [Ins 2.15 \(4\) \(a\)](#), a preliminary contract summary as defined in s. [Ins 2.15 \(4\) \(b\)](#), and the a “Wisconsin Buyer’s Guide to Annuities” as defined in s. [Ins 2.15 \(4\) \(c\)](#).

SECTION 6. These changes will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Stats., and shall apply to solicitations which commence on the first day of the sixth month after the effective date of these changes.

**Office of the Commissioner of Insurance
Private Sector Fiscal Analysis**

for Section Ins 2.14, 2.15, 2.16 relating to Disclosure Requirements for Life Insurance
and Annuity Contracts

This rule change will have no significant effect on the private sector regulated by OCI.