



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

September 21, 2016

The Honorable John A. Alario
President of the Senate
P.O. Box 94183
Baton Rouge, LA 70804

Via email
apa.senatepresident@legis.la.gov

The Honorable Taylor F. Barras
Speaker of the House
P.O. Box 94062
Baton Rouge, LA 70804

Via email
apa.housespeaker@legis.la.gov

The Honorable John R. Smith
Chairman
Senate Committee on Insurance
P.O. Box 94183
Baton Rouge, LA 70804

Via email
apa.s-ins@legis.la.gov

The Honorable Kirk Talbot
Chairman
House Committee on Insurance
P.O. Box 94062
Baton Rouge, LA 70804

Via email
apa.h-ins@legis.la.gov

RE: Summary Report - Regulation 40, Summary Document and Disclaimer
and Notice of Noncoverage

Dear President Alario, Speaker Barras, Senator Smith, and Representative Talbot:

The Louisiana Department of Insurance (LDI) hereby submits the following summary report required by La. R.S. 49:968(D)(1)(b), and announces its intention to proceed with final rulemaking of Regulation 40, which was published as a Notice of Intent in the August, 2016 edition of the *Louisiana Register*, and amended to accomplish those purposes required by Acts 2009, No. 258 and Acts 2014, No. 374 of the Regular Sessions of the Louisiana Legislature as it pertains to coverage and limitations.

President Alario, Speaker Barras, Senator Smith, and Representative Talbot:
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Interested persons were provided the opportunity to submit written comments to the LDI on the proposed amendments by 4:30 p.m., September 19, 2016. The LDI did not receive any oral or written comments by the expiration of the commentary period.

Other than a few technical changes, which are summarized below, no other changes have been made to the proposed regulation. A copy of the proposed regulation, including the technical changes, is attached.

- 1) Opening paragraph: changed "Notice of Intent" to "Rule"; replaced the words "hereby gives notice of its intent to" with "has amended"; removed the words "proposed" in the second paragraph
- 2) Heading: removed the period after the word "Regulation"; inserted a space between "Part" and "XIII")
- 3) Section 909: capitalized the first sentence contained in the notice

Subject to legislative oversight, the LDI would like to adopt Regulation 40 as amended, along with its technical changes, and submit it to the Office of the State Register for publication. A copy of the summary report will be placed on the LDI's website in accordance with R.S. 49:968(D)(1)(c). If you have any questions or need additional information, please contact me at (225) 342-4673 or via email at cguidry@ldi.la.gov.

Sincerely,



Carol Fowler-Guidry
Deputy General Counsel
Division of Legal Services

Enclosure: Amended Regulation 40 with technical changes

business or by 4:30 p.m., and should be addressed to Claire Lemoine, Louisiana Department of Insurance and may be mailed to P.O. Box 94214 Baton Rouge, LA 70804 or faxed to (225) 342-1632. If comments are to be shipped or hand-delivered, please deliver to Poydras Building, 1702 North Third Street, Baton Rouge, LA 70804.

James J. Donelon
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Regulation 31—Holding Company

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in implementation costs or savings to state or local governmental units. Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 22:11, R.S. 22:691.11 and R.S. 22:691.27, the Department of Insurance (LDI) has amended Regulation 31. The purpose of the amendments is to assist the LDI in effectively regulating the National Association of Insurance Commissioner's (NAIC) model regulation regarding the Insurance Holding Company System Regulatory Law. The proposed rule change provides clarification of the definition of an Ultimate Controlling Person and provides for supplementary filings of unaudited annual financial statements for single state companies doing business in Louisiana under the current provisions of Regulation 31.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no impact on state or local governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change provides supplementary filings for an ultimate controlling person of a domestic insurer licensed and writing only in Louisiana. This person may file an unaudited balance sheet in lieu of a reviewed financial statement. This may provide an economic benefit for not having the costs of obtaining a reviewed financial statement.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no impact upon competition and employment in the state.

Denise Brignac
Deputy Commissioner
1608#054

Evan Brasseaux
Staff Director
Legislative Fiscal Office

**RULE
NOTICE OF INTENT**

**Department of Insurance
Office of the Commissioner**

**Regulation 40—Summary Document and Disclaimer and
Notice of Noncoverage (LAC 37:XIII.Chapter 9)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S.

49:950, et seq., ^{has amended} hereby gives notice of its intent to amend Regulation 40 regarding summary document and disclaimer and notice of noncoverage.

The proposed regulation was necessitated by the passage of Acts 2009, No. 258 and Acts 2014, No. 374 of the Regular Session of the Louisiana Legislature, and is being amended to accomplish those purposes required by said acts as it pertains to coverage and limitations. The proposed amendments also makes technical changes and affect the following sections of the LAC 37:XIII §901, §903, §905, §907, and §909. Section 911 is an addition to the proposed regulation.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 9. Regulation 40—Summary Document and
Disclaimer and Notice of Noncoverage**

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§901. Purpose

A. The purpose of Regulation 40 is to implement the Louisiana Life and Health Insurance Guaranty Association Law as set forth in R.S. 22:2081, et seq., which is designed to protect covered persons against the risk of insurer insolvencies under certain life, health, or annuity policies or contracts.

B. The purpose of the documents, designated in §903 as exhibit A and exhibit B, is to give notice to the insurance-buying consumer that the Louisiana Life and Health Insurance Guaranty Association Law includes restrictions as to coverage, and in some instances excludes coverage for certain types of policies or contracts, and includes substantial limitations as to the amounts which may be reimbursed in the event of the insolvency of the insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11, and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§903. Applicability and Scope

A. Regulation 40 applies to the Louisiana Life and Health Insurance Guaranty Association (LLHIGA) as created by R.S. 22:2085 and its member insurers as defined by R.S. 22:2084.

B. Exhibit A, which follows hereto and is made a part hereof, sets forth the form and content of the summary document, as approved by the commissioner of insurance, summarizes the coverage provided by the Louisiana Life and Health Insurance Guaranty Association Law, and includes a disclaimer statement which is to be placed conspicuously on the front of the summary document. Pursuant to R.S. 22:2098(B), the Summary Document with the Disclaimer is to be delivered with each life, health, or annuity policy or contract, described in R.S. 22:2083(B)(1), issued or delivered in Louisiana.

C. Exhibit B, which follows hereto and is made a part hereof, sets forth the notice of noncoverage required by R.S. 22:2098(D). It is required to be delivered with each life, health, or annuity policy or contract described in R.S. 22:2083(B)(1) and excluded from coverage under R.S. 22:2083(B)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11, and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§905. Form and Content

A. The summary document and disclaimer shall be in a form which complies with §907, exhibit A, which follows hereto and forms a part of Regulation 40.

B. The notice of noncoverage shall be in a form which complies with §909, exhibit B, which follows hereto and forms a part of Regulation 40.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11 and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§907. Exhibit A—Summary of the Louisiana Life and Health Insurance Guaranty Association Act and Notice Concerning Coverage Limitations and Exclusions

A. Residents of Louisiana who purchase life insurance, annuities, or health insurance should know that the insurance companies licensed in this state to write these types of insurance are required by law to be members of LLHIGA. The purpose of LLHIGA is to assure that policyholders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its obligations. If this happens, LLHIGA will assess its other member insurance companies for the money to pay the claims of insured persons who live in this state, and in some cases, to keep coverage in force. However, the valuable extra protection provided by these insurers through LLHIGA is limited. As noted in the disclaimer below, this protection is not a substitute for consumers' care in selecting companies that are well-managed and financially stable.

B. Except as provided in R.S. 22:2098(D), when an insurer delivers a policy or contract described in R.S. 22:2083(B)(1), then prior to or at the time of delivery, the disclaimer notice described in R.S. 22:2098(C) and approved by the commissioner, shall be given separately to the policy or contract holder:

Disclaimer

The Louisiana Life and Health Insurance Guaranty Association provides coverage of claims under some types of policies if the insurer becomes impaired or insolvent. **COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY.** Even if coverage is provided, there are significant limits and exclusions. Coverage is generally conditioned upon residence in this state. Other conditions may also preclude coverage.

Insurance companies and insurance agents are prohibited by law from using the existence of the association or its coverage to sell you an insurance policy.

You should not rely on the availability of coverage under the Louisiana Life and Health Insurance Guaranty Association when selecting an insurer.

The Louisiana Life and Health Insurance Guaranty Association or the Department of Insurance will respond to any questions you may have which are not answered by this document.

LLHIGA
P.O. Drawer 44126
Baton Rouge, LA 70804

Department of Insurance
P. O. Box 94214
Baton Rouge, LA 70804-9214

C. The state law that provides for this safety-net coverage is called the Louisiana Life and Health Insurance Guaranty Association Law (the law), and is set forth at R.S. 22:2081 et seq. The following is a brief summary of this law's coverages, exclusions and limits. This summary does not cover all provisions of the law; nor does it in any way change any person's rights or obligations under the law or the rights or obligations of LLHIGA.

D. Generally, individuals will be protected by the Life and Health Insurance Guaranty Association if they live in this state and hold a direct non-group life, health, or annuity policy or contract, a certificate under a direct group policy or contract for a supplemental contract to any of these, or an unallocated annuity contract, issued by an insurer authorized to conduct business in Louisiana. The beneficiaries, payees or assignees of insured persons may also be protected as well even if they live in another state unless they are afforded coverage by the guaranty association of another state, or other circumstances described under the law are applicable.

E. Exclusions from Coverage

1. A person who holds a direct non-group life, health, or annuity policy or contract, a certificate under a direct group policy or contract for a supplemental contract to any of these, or an unallocated annuity contract is not protected by LLHIGA if:

a. he is eligible for protection under the laws of another state (This may occur when the insolvent insurer was incorporated in another state whose Guaranty Association protects insureds who live outside that state.);

b. the insurer was not authorized to do business in this state;

c. his policy was issued by a profit or nonprofit hospital or medical service organization, an HMO, a fraternal benefit society, a mandatory state pooling plan, a mutual assessment company or similar plan in which the policyholder is subject to future assessments, an insurance exchange, an organization that issues charitable gift annuities as is defined in R.S. 22:952(A)(3), or any entity similar to any of these.

2. LLHIGA also does not provide coverage for:

a. any policy or portion of a policy which is not guaranteed by the insurer or for which the individual has assumed the risk, such as a variable contract sold by prospectus;

b. any policy of reinsurance (unless an assumption certificate was issued);

c. interest rate or crediting rate yields, or similar factors employed in calculating changes in value, that exceed an average rate;

d. dividends, premium refunds, or similar fees or allowances described under the Law;

e. credits given in connection with the administration of a policy by a group contract holder;

f. employers', associations' or similar entities' plans to the extent they are self-funded (that is, not insured by an insurance company, even if an insurance company administers them) or uninsured;

g. unallocated annuity contracts (which give rights to group contract holders, not individuals), except unallocated annuity contracts and defined contribution

government plans qualified under Section 403(b) of the United States Internal Revenue Code (26 U.S.C. § 403(b)).

h. an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the policy owner or contract owner, including but not limited to, claims described under the Law;

i. a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to "Medicare Part C coverage" or "Medicare Part D coverage" and any regulations issued pursuant to those parts;

j. interest or other changes in value to be determined by the use of an index or other external references but which have not been credited to the policy or contract or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer, whichever is earlier.

F. Limits on Amounts of Coverage

1. The Louisiana Life and Health Insurance Guaranty Association Law also limits the amount that LLHIGA is obligated to pay out.

2. The benefits for which LLHIGA may become liable shall in no event exceed the lesser of the following:

a. LLHIGA cannot pay more than what the insurance company would owe under a policy or contract if it were not an impaired or an insolvent insurer.

b. For any one insured life, regardless of the number of policies or contracts there are with the same company, LLHIGA will pay a maximum of \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance.

c. For any one insured life, regardless of the number of policies or contracts there are with the same company, LLHIGA will pay a maximum of \$500,000 in health insurance benefits, and LLHIGA will pay a maximum of \$250,000 in present value of annuities, including net cash surrender and net cash withdrawal values.

3. In no event, regardless of the number of policies and contracts there were with the same company, and no matter how many different types of coverages, LLHIGA shall not be liable to expend more than \$500,000 in the aggregate with respect to any one individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11 and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§909. Exhibit B—Notice of Noncoverage

A. When an insurer or agent delivers a policy or contract described in R.S. 22:2083(B)(1) that is excluded from coverage by R.S. 22:2083(B)(2), then prior to or at the time of such delivery, the following notice shall be given separately to the policy or contract holder:

The policy or contract you are purchasing is not covered by the Louisiana Life and Health Insurance Guaranty Association.

Coverage is specifically excluded by law for the type of policy or contract you are purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11 and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§911. Severability

A. If any Section or provision of Regulation 40 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 40 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 40 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11 and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

Family Impact Statement

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

Poverty Impact Statement

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

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5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Statement

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Provider Impact Statement

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

Public Comments

Interested persons may submit written comments on the proposed promulgation of Regulation 40. Such comments must be received no later than September 19, 2016 by close of business, 4:30 p.m., and addressed to Carol Fowler-Guidry, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214 or faxed to (225) 342-1632.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 40—Summary Document and Disclaimer and Notice of Noncoverage

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed amended regulation will not result in implementation costs or savings to the state or local governmental units. The purpose of Regulation 40 is to implement the Louisiana Life and Health Insurance Guaranty Association Law (LLHIGA) as set forth in R.S. 22:2081, et seq., which is designed to protect covered persons against the risk of insurer insolvencies under certain life, health or annuity policies or contracts. The proposed amended regulation is necessitated by the passage of Act 258 of the 2009 Regular Session and Act 374 of the 2014 Regular Session of the Louisiana Legislature. The amendments pertain to technical changes and clarifies disclaimer and limitations of coverage with LLHIGA.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amended Regulation 40 will have no impact on state or local governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed amended Regulation 40 will have no impact to directly affected persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amended Regulation 40 will have no impact upon competition and employment in the state.

Denise Brignac
Deputy Commissioner
1608#052

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 78—Policy Form Filing Requirements (LAC 37:XIII.Chapter 101)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S.49:950 et seq., hereby gives notice of its intent to amend Regulation 78—Policy Form Filing Requirements.

The purpose of amending Regulation 78 is to provide a more streamlined and cost-effective means for insurance companies to file policy forms, amendments and associated documents with the Department of Insurance; to provide uniform procedures for filing among the states; and to bring this regulation into compliance with the Affordable Care Act.