**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., 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

### §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:

### §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:

## §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:

## §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. ...

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. ...

b. ...

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. ...

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:

**§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:

**§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:

## 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, Louisiana 70804-9214 or faxed to (225) 342-1632.

## FAMILY IMPACT STATEMENT

1. Describe the effect of the proposed regulation on the stability of the family. The proposed regulation should have no measurable impact on 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 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 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 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 regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation the ability of the family or a local government to perform the function as contained in the Rule. The proposed regulation should have no impact upon the ability of the family or a local government 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 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 regulations 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 regulation should have no effect on employment and workforce development.

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

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed 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 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 regulation should have no measurable impact upon small businesses.

3. A statement of the probably effect on impacted small businesses. The proposed 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 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 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 regulation will have no effect.

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

# FISCAL AND ECONOMIC IMPACT STATEMENT
# FOR ADMINISTRATIVE RULES

**Person Preparing Statement:** Anita R. Robert
**Phone:** (225) 219-0609
**Return Address:** P. O. Box 94214
Baton Rouge, LA
70804-9214

**Department:** Louisiana Department of Insurance
**Office:** Management & Finance
**Rule Title:** Summary Document and Disclaimer
**Effective Date:** Upon Publication

## SUMMARY
**(Use Complete Sentences)**

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL 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 NON-GOVERNMENTAL 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.

RECEIVED
MAY 05 2016
Legislative Fiscal Office

Denise Brignac, Deputy Commissioner
La. Department of Insurance

5-6-16
Date of Signature

Evan Brasseaux, Staff Director
Legislative Fiscal Officer or Designee

5/6/16
Date of Signature

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

**The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriated legislative oversight subcommittee in its deliberations on the proposed rule.**

**A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the Notice of Intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of the current and proposed rules with amended portions indicated).**

The purpose of Regulation 40 is to implement the LLHIGA 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. Regulation 40 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 make technical changes and affect the following sections of the LAC 37:XIII §901, §903, §905, §907 and §909 and adding §911.

§901 – technical changes
§903 – technical changes
§905 – technical changes
§907 – technical changes and clarifies disclaimer should be given separately to the policy or contract holder as described in R.S. 22:2083(B)(1). (direct non-group life, health and annuity). Also updates limits of coverage by the passage of ACTS 2009, No. 258. LLHIGA will pay maximum of $300,000 in life, $500,000 in health, $250,000 in annuities.
§909 – clarifies notice for non-coverage
§911 – adds severability of regulation 40

**B. Summarize the circumstances which require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.**

The Department of Insurance is tasked with administering the Insurance Code, which regulates the business of insurance in all of its phases. The proposed amended regulation is necessitated by the passage of Acts 2009, No. 258 and Acts 2014, No. 374 of the Regular Session of the Louisiana Legislature.

**C. Compliance with Act 11 of the 1986 First Extraordinary Session:**

**(1) Will the proposed rule change result in any increase in expenditure of funds? If so, specify the amount and the source.**

No increase in expenditure of funds is anticipated as a result of the proposed regulation.

**(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?**

**_____No. If no, provide justification as to why this rule change should be published at this time.**

**FISCAL AND ECONOMIC IMPACT STATEMENT**
**WORKSHEET**

**I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM ACTION PROPOSED.**

**1. What is the anticipated increase (decrease) in costs to implement the proposed action?**

| COSTS | FY 15/16 | FY 16/17 | FY 17/18 |
|---|---|---|---|
| OPERATING EXPENSES | 0 | 0 | 0 |
| PROFESSIONAL SERVICES | 0 | 0 | 0 |
| OTHER CHARGES | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 |
| MAJOR REPAIR/CONSTR | 0 | 0 | 0 |
| POSITIONS (Number) | 0 | 0 | 0 |
| | | | |

**2. Provide a narrative explanation of the costs or savings shown in "A.1" above, including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.**

Louisiana Department of Insurance (LDI) does not anticipate any implementation costs (savings) as a result of the proposed amended regulation.

**3. Sources of funding for implementing the proposed rule or rule change.**

| SOURCE | FY 15/16 | FY 16/17 | FY 17/18 |
|---|---|---|---|
| STATE GENERAL FUND | 0 | 0 | 0 |
| AGENCY SELF-GENERATED | 0 | 0 | 0 |
| DEDICATED | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 |
| OTHER (SPECIFY) | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 |

**4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?**

No additional funding is necessary to implement the proposed amended regulation.

**B. COSTS OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.**

**1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.**

The proposed amended regulation will have no impact on local governmental revenues.

**2. Indicate the sources of funding of local governmental unit(s) which will be affected by these cost or savings.**

No source of funding is necessary; there is no impact on local governmental units as a result of the proposed amended regulation.

**FISCAL AND ECONOMIC IMPACT STATEMENT**
**WORKSHEET**
**(Continued)**

**II. A. What increase (decrease) in revenues can be anticipated from the proposed action?**

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

| SOURCE | FY 15/16 | FY 16/17 | FY 17/18 |
|---|---|---|---|
| STATE GENERAL FUND | 0 | 0 | 0 |
| AGENCY SELF-GENERATED | 0 | 0 | 0 |
| DEDICATED | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 |
| OTHER (SPECIFY) | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 |
| | | | |
| | | | |

**B. Provide a narrative explanation of each increase or decrease in revenues shown in "A". Describe all data, assumptions and other methods used in calculating these increases or decreases.**

The Louisiana Department of Insurance will have no increase or decrease in revenue as a result of the adoption of the proposed amended regulation.

**III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNME NTAL GROUPS.**

**A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.) they may have to incur as a result of the proposed action.**

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

**B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.**

**IV. EFFECTS ON COMPETITION AND EMPLOYMENT.**

**Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.**

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