



**LICONY HOTLINE**  
Friday, October 14, 2016

## **SMART Commission/New York City Retirement Security**

**Contact: Kate Herlihy**

Regarding the topic of retirement security, the newly-appointed Governor's SMART Commission held its first meeting on September 30th, and is scheduled to meet again on October 26th. Last week, NYC Comptroller Scott Stringer publicly released a retirement savings plan for NYC's private sector workers to address the nearly 60% of NYC private sector workers without access to retirement plans through work. The September 30th SMART Commission meeting included a presentation by Comptroller Stringer regarding their report and plan. The plan - "The New York City Nest Egg: A Plan for Addressing Retirement Security in New York City" - suggests the following to address private sector employee access to retirement plans:

- Employers that currently offer a workplace retirement plan would be free to continue doing so;
- Employers that do not offer a retirement plan but would like to, would be able to shop for plans through a curated marketplace overseen by an independent board;
- Employers that want to offer a 401(k) plan but are concerned about ERISA fiduciary responsibilities and paperwork associated with individually sponsoring a plan would be able to select a voluntary publicly-sponsored "turn-key" product in the new NYC 401(k) Marketplace, the Empire City 401(k) MEP; and
- Employers that do not select a plan on their own or through the NYC 401(k) Marketplace would default in to the new NYC Roth IRA.

The full plan is available here: <http://comptroller.nyc.gov/reports/the-new-york-city-nest-egg-a-plan-for-addressing-retirement-security-in-new-york-city/>.

Members are encouraged to submit comments to LICONY, and to join **the call scheduled for Wednesday, October 19th** to discuss the Nest Egg Plan.

## LICONY/DFS Life Insurance Task Force Meeting

Contact: Diane Stuto

The next LICONY/Department of Financial Services (DFS) Life Insurance Task Force meeting has been scheduled for **Thursday, October 20th beginning at 10:30 a.m.** Agenda items to be taken up at the meeting will include: the 2017 LICONY Affirmative Legislative & Regulatory Programs and the DFS Legislative Program for 2017; Part 500 of 23NYCRR - *Cybersecurity Requirements for Financial Services Companies*; Draft 4th amendment to Regulation 74 - *Life & Annuity Cost Disclosure & Sales Illustrations*; discussion of DFS policy form filing process, including the draft Best Practices developed by LICONY; status reports on active actuarial issues; status report on DFS/LICONY deliberations re: draft amendments to Regulation 47 - *Separate Accounts & Separate Account Annuities*; status of the draft Circular Letter on deferred to immediate annuity replacement transaction & betterment of rate provisions; and discussion of coordination between the NY and the NAIC lost policy locator processes.

### Draft 4th Amendment to Regulation 74 - *Life & Annuity Cost Disclosure & Sales Illustrations*

Contact: Diane Stuto

Late last week, LICONY shared with members draft amendments to Regulation 74 - *Life & Annuity Cost Disclosure & Sales Illustrations*. The release of these draft amendments have been long-awaited with the Department frequently citing that they were being developed in response to, among other things, frequent consumer complaints about cost of insurance premium increases for universal life policies, deliberations at the NAIC re: illustrations for indexed universal life products (AG 49), and discussions with the industry over permissible delays in disclosure document delivery at application in certain direct market circumstances. At LICONY's request, **DFS extended the date for submission of comments on this draft to at least Monday, October 31st.** The DFS will also be providing an overview of the draft amendment, and their rationale for the provisions, at the October 20th LICONY/DFS Life Insurance Task Force meeting.

Some of the highlights from the draft amendments include:

- An addendum to the Life Insurance Buyers Guide entitled *Universal Life - Simplified Product Explanation* for all universal life policy sales;
- New disclosures related to modal premium costs for inclusion in sales illustrations or preliminary information;
- A new supplemental illustration requirement relating to policy loan provisions;
- Authorization for a one business day delay in delivery of illustrations or preliminary information, if it is not reasonably possible to provide them at

- point of sale, w/applicant consent and with other qualifications, including an additional signed certification;
- Revisions to the annual reports to life insurance policyholders with new disclosures, including information relating to cost of insurance charges for flexible premium (UL) policies;
  - New requirements for illustration actuaries;
  - A new "universal life policy performance notice" or warning to be provided to universal life customers at application;
  - Additional disclosure & illustration requirements for life policies and annuity contracts with index accounts; and
  - New provisions governing the assumptions underlying the disciplined current scale for policies & contracts.

Members are encouraged to submit comments to LICONY on the draft amendments at their earliest convenience.

## **Update on Cybersecurity Regulation**

**Contact: Diane Stuto**

Part 500 of 23NYCRR -- *Cybersecurity Requirements for Financial Services Companies* was officially proposed upon publication in the NYS Register on September 28th. The Proposed Regulation is now subject to a 45-day public comment period, which will expire on November 12th (technically on the next business day after that, which is Monday, November 14th, since the 12th falls on a Saturday). LICONY staff is continuing to receive and review the multitude of comments from members submitted to LICONY on the Proposed Regulation. LICONY is developing a draft comment submission, which we will share with members sometime next week, and plan on coordinating with the ACLI on the possible development of a joint industry trade letter as well. Cassie Lentchner, the DFS Deputy Superintendent of Compliance who is the contact person for this Proposed Regulation, tentatively plans on attending **the October 20th LICONY/DFS Life Task Force meeting** to address the Proposed Regulation and initiate a discussion of it.

## **Paid Family Leave**

**Contact: Kate Herlihy**

LICONY provided feedback to the DFS on October 7th regarding their Paid Family Leave (PFL) draft regulations as presented to LICONY members at the September meeting with the Department. LICONY staff received extensive written feedback from LICONY members on the draft regulation, and also hosted a call with members of the PFL Working Group to discuss and solicit additional feedback. LICONY's comment submission stressed the need to have access to the community rate and regulations no later than January 1, 2017 to enable

members to make business decisions, and as applicable, begin preparations to offer the product in N.Y. The submission also suggested definitions of earned premium and incurred claim, and addressed the risk adjustment mechanism's target loss ratios and group sizes set forth in the draft regulations.

LICONY staff and several members also met with the Workers Compensation Board (WCB) on October 6 to discuss their plans for implementation of the PFL law, and to review their draft regulations. The WCB provided a high level walk through of their draft regulations and draft forms (those in attendance had to return the draft regulations before leaving). We note that the definitions in the draft regulations generally track existing disability and FMLA definitions. Any LICONY members who would like to review the draft regulations and forms can do so by contacting the WCB to set up a meeting at any of their regional offices.

New York's PFL law will require carriers who are in the Workers Compensation disability market to include a PFL rider on such policies or exit the market, beginning January of 2018. We expect that the DFS and WCB will release their regulations for public comment this fall.

### **Forms Filing Best Practices**

**Contact: Kate Herlihy**

LICONY will meet today, Friday, October 14th, at 11 a.m. with the DFS to discuss the current form filing process in New York. LICONY shared the Policy Form Filing "Best Practices" developed by LICONY's Policy Forms Filing Subcommittee with DFS in advance of today's meeting.

### **Disposition of DFS Proposed Year-end Actuarial Opinion & Memorandum on Variable Products With Guarantees**

**Contact: Diane Stuto**

The DFS Life Bureau indicated to LICONY earlier this year that they were planning on re-imposing a standalone actuarial opinion and memorandum for variable products with guarantees as a year-end 2016 requirement, stating that such opinion was mandated pursuant to the separate account provisions of the law (§4240). However, LICONY pointed out to the DFS in a meeting last month that such opinion requirement had been removed from Regulation 151 in 2009, and also called attention to the published commentary from the Department accompanying that change, which stated that such requirement was no longer necessary. Subsequent to that meeting, DFS Life Bureau staff have informed LICONY that they will refrain from requiring the opinion for year-end 2016, noting the necessity to amend the Regulation to accomplish that task and that they were contemplating taking that action, potentially for year-end next year.

## **Pandemic Influenza Preparedness Data Call**

**Contact: Kate Herlihy**

On Friday, October 7, the DFS issued its annual Pandemic Influenza Preparedness data call. All licensed insurance entities, including life insurers and fraternal benefit societies, are required to complete an Excel spreadsheet questionnaire that is appropriate for the licensed entity's line of business (health insurance or all other types of insurance) regarding the company's readiness for addressing a pandemic influenza epidemic. Responses are due (via the DFS portal) by Friday, November 11. The full text of DFS' Section 308 letter, as well as a link to the survey questionnaire is available here:

[http://www.dfs.ny.gov/insurance/datacall/em\\_datacall.htm](http://www.dfs.ny.gov/insurance/datacall/em_datacall.htm).

## **16th Annual Legislative and Regulatory Conference a Success**

**Contact: Andrew Rush**

More than 150 registrants from LICONY member companies gathered at the Otesaga Resort Hotel in Cooperstown for LICONY's 16th Annual Legislative and Regulatory Conference. The conference once again delivered a mix of highly-informative and engaging programs, with entertainment from the Capitol Steps and acclaimed author Richard Norton Smith, as well as a chance to network and build relationships.

Conference registrants heard from key speakers, including Department of Financial Services Superintendent Maria Vullo, a Mets fan who addressed the conference at dinner on Thursday night. The Superintendent, speaking just down the street from the Baseball Hall of Fame, noted that both she and new LICONY President Mary Griffin were in their "rookie years" in their respective positions and that she looked forward to having an open dialogue with the industry on important issues. The Superintendent also reiterated her belief that being both pro-business and pro-consumer is part of her job, and these two tenets do not have to conflict.

Earlier in the day, the conference was treated to a panel featuring Senate Insurance Committee Chair Senator James Seward and Assembly Insurance Committee Chair Kevin Cahill, who were joined by ranking members Neil Breslin and William Barclay. The four leaders shared views on the industry, the state of politics, and how they work together during the legislative session.

Past Insurance Superintendents, DFS leaders, political pundits, and experts on the DOL fiduciary rules also shared their time and knowledge with LICONY members, who were able to earn CLE credits for many of the programs.

Assembly Majority Leader Joseph Morelle addressed the conference at lunch, and Senator Seward spoke on behalf of the Senate, and as always, was a gracious host.

LICONY has committed to returning to Cooperstown next year and planning will begin shortly on the 2017 conference.

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