

1 Public Protection Cabinet

2 Department of Insurance

3 Division of Health and Life Insurance and Managed Care

4 (Amendment)

5 806 KAR 15:070. Annuity nonforfeiture.

6 RELATES TO: 304.14-120, 304.15-365

7 STATUTORY AUTHORITY: KRS 304.2-110, 304.15-365(7)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the  
9 Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to  
10 the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010  
11 ~~[KRS 304.2-110(1) authorizes the Executive Director of the Office of Insurance to promulgate~~  
12 ~~administrative regulations necessary for or as an aid to the effectuation of any provision of the~~  
13 ~~Kentucky Insurance Code, KRS Chapter 304].~~ KRS 304.15-365(7) authorizes the commissioner  
14 ~~[-executive director]~~ to promulgate administrative regulations to implement KRS 304.15-365(6)  
15 ~~[the statute]~~ and to establish ~~[provide for]~~ further adjustments to the calculation of minimum  
16 nonforfeiture amounts for contracts that provide substantive participation in an equity index  
17 benefit and for other contracts that ~~[for which]~~ the commissioner ~~[executive director]~~ shall  
18 determine if ~~[determines]~~ adjustments are justified. The function of this ~~[This]~~ administrative

1 regulation is to establish [~~establishes~~] the requirement [~~requirements~~] to implement the annuity  
2 nonforfeiture provisions established [~~pertaining to annuity nonforfeiture~~] in KRS 304.15-365(4).

3 Section 1. Definitions. As used in this administrative regulation:

4 (1) "Basis" means:

5 (a) If used in the context of an initial or redetermination method, the specified period over  
6 which an average is computed that shall produce [~~produces~~] the value of the five-year Constant  
7 Maturity Treasury (CMT) Rate; or

8 (b) If used in the context of the equity-indexed benefit [~~benefits~~], the point in time used  
9 for establishing the parameters that:

- 10 1. Are incorporated into the calculation of the value of the equity-indexed options; and  
11 2. Include the risk free rate, dividend yield, index volatility, and prior index values if the  
12 option is path dependent.

13 (2) "Equity-indexed benefit [~~benefits~~]" means a benefit that:

14 (a) Is in an annuity contract in which the value of the benefit is determined using an  
15 interest crediting rate based on the performance on an equity-based index and contract  
16 parameters; and

17 (b) Shall [~~Does~~] not include the variable benefit [~~benefits~~] of separate account variable  
18 annuities and indexed guaranteed separate account contracts purchased by an institutional buyer  
19 [~~buyers~~].

20 (3) "Commissioner" [~~"Executive director"~~] means the Commissioner of Insurance as [~~is~~]  
21 defined by [~~in~~] KRS 304.1-050(1).

1 (4) "Index term" means each period of time until the next indexed interest crediting date.

2 (5) "Initial method" means the basis upon which the initial nonforfeiture rate is  
3 established and the period ~~that [for which]~~ it ~~shall apply [applies]~~ and ~~shall [which may]~~ last for  
4 the ~~entirety [entire duration]~~ of the contract.

5 (6) "Initial nonforfeiture rate" means the nonforfeiture rate applicable at contract issue.

6 (7) "Minimum nonforfeiture amount" means the amount ~~established by [determined~~  
7 ~~pursuant to]~~ KRS 304.15-365(4)(a).

8 (8) "Modal period" means the period the company specifies during which the current  
9 nonforfeiture rate will remain fixed.

10 (9) "Nonforfeiture rate" means the interest rate established in KRS 304.15-365(5).

11 (10) "Redetermination method" means the redetermination date, basis, and period for all  
12 future redetermination nonforfeiture rates.

13 Section 2. Basis Applicability. The same basis shall apply to equity-indexed benefits and  
14 nonequity-indexed benefits, if any.

15 (1)(a) The basis may use a specified period that is determined by the level of change in  
16 the CMT rate, or another date-dependent methodology adopted by the National Association of  
17 Insurance Commissioners and in compliance with this administrative regulation.

18 (b) A specifically excluded method is a method that shall define the nonforfeiture rate as  
19 the lowest rate in a specified time period.

20 (c) A method based upon changes in CMT levels shall move up or down in an identical  
21 manner with changes in interest rates, subject to KRS 304.15-365(5).

1 (2) If the basis uses a specified period determined by the level of change in the CMT rate:

2 (a) The nonforfeiture rate applicable if this subsection is first utilized for a contract form  
3 shall be determined by a method using a specified period or a date-dependent methodology in  
4 compliance with this administrative regulation.

5 (b)1. A symmetrical range shall be defined that shall [~~will~~] determine if the rate shall be  
6 updated.

7 2. The maximum allowable range shall be plus or minus fifty (50) basis points.

8 (c) At the beginning of each modal period, a potential nonforfeiture rate shall be  
9 calculated using the method in paragraph (a) of this subsection, without incorporating caps or  
10 floors.

11 (d) If the difference between the potential nonforfeiture rate and the current initial  
12 nonforfeiture rate is less than or equal to the range, the current nonforfeiture rate shall not be  
13 updated.

14 (e) If the difference between the potential nonforfeiture rate and the current nonforfeiture  
15 rate is more than the range, the current nonforfeiture rate shall be updated to be equal to the  
16 potential nonforfeiture rate adjusted for rounding and caps or floors.

17 Section 3. Initial Method. (1) The initial method shall be filed with the commissioner  
18 [~~executive director~~].

19 (2)(a) Changes to the initial method shall be allowed once per calendar year.

20 (b) Changes to the initial method shall be filed with the commissioner [~~executive~~  
21 ~~director~~] in accordance with KRS 304.14-120.

1 (c) A change in the initial method would be applicable only to new contracts or new  
2 certificates issued subsequent to the effective date of the change in method.

3 (3) The initial method may [~~shall~~] not be required to be disclosed in the contract form.

4 (4) The initial nonforfeiture rate shall not be required to be disclosed in the contract form  
5 unless redetermination is used.

6 (5) The minimum nonforfeiture parameters shall not be required to be disclosed in the  
7 contract unless they are utilized in the calculation of the guaranteed minimum value of the  
8 contract.

9 Section 4. Redetermination Method. (1) If redetermination is used, the method shall be  
10 disclosed in the contract form or certificate.

11 (2) Changes in the redetermination method for future issues or certificates shall be filed  
12 in accordance with KRS 304.14-120.

13 Section 5. Nonforfeiture Rate and Minimum Nonforfeiture Amount. (1) An annuity  
14 contract or certificate without an equity-indexed benefit shall have one (1) nonforfeiture rate and  
15 one (1) minimum nonforfeiture amount applicable to the entire contract.

16 (2) An annuity contract or certificate with equity-indexed benefits may have more than  
17 one (1) nonforfeiture rate applicable to the contract or certificate subject to the following:

18 (a) If the contract has a non equity-indexed benefit, the nonforfeiture interest rate  
19 applicable to the non equity-indexed benefit shall be determined in compliance with KRS  
20 304.15-365(5) without [~~any~~] consideration of any equity indexed feature.

1 (b) If an additional reduction is elected for equity-indexed benefits, reduced nonforfeiture  
2 interest rates may apply to each equity-indexed benefit for which the additional reduction is  
3 elected in compliance with KRS 304.15-365(6) and Section 5 of this administrative regulation.

4 (c) The minimum nonforfeiture amount for the contract shall be determined by  
5 calculating a nonforfeiture amount, without any reduction for indebtedness to the company on  
6 the contract including interest due and accrued on the indebtedness, for each equity-indexed and  
7 non equity-indexed benefit using the nonforfeiture interest rates described in this subsection,  
8 summing the results, and then deducting any indebtedness to the company on the contract  
9 including interest due and accrued on the indebtedness.

10 (d) If contract value is transferred:

11 1. From a benefit, the benefit's minimum nonforfeiture amount shall be reduced by the  
12 benefit's minimum nonforfeiture amount prior to the transfer and multiplied by the proportion of  
13 the benefit's contract value that is transferred;

14 2. To a benefit, the benefit's minimum nonforfeiture amount shall be increased by the  
15 sum of all reductions in minimum nonforfeiture amounts determined pursuant to subparagraph 1  
16 of this paragraph, and multiplied by the proportion of total contract value that is transferred to  
17 that benefit; or

18 3. For the purpose [~~purposes of the~~] of calculations specified in subparagraphs 1 and 2 of  
19 this paragraph the contract value shall first be reduced by any fees associated with the transfer.

20 (e) In the case of a withdrawal from a benefit in which the amount of withdrawal exceeds  
21 the benefit's nonforfeiture amount, the insurer shall treat the excess withdrawal in a manner at  
22 least as favorable to the contract holder as deducting the excess withdrawal from the

1 nonforfeiture amounts of other benefits in order from lowest to highest nonforfeiture interest  
2 rate.

3 (f) A contract charge or premium tax paid by the company shall be allocated to a  
4 benefit's minimum nonforfeiture amount based on the percentage of that benefit's contract value  
5 to the total contract value.

6 Section 6. Equity-indexed Benefits. (1) If a company chooses to take the additional  
7 reduction for an equity-indexed benefit, the company shall prepare a demonstration showing  
8 compliance with KRS 304.15-365(6).

9 (2) To demonstrate compliance a company shall:

10 (a) Calculate the annualized option cost for the equity-indexed benefit in the form of  
11 basis points for the entire index term as of the beginning of the index term.

12 1. In making the calculation, a company shall:

13 a. Use the equity-indexed benefit's guaranteed product features;

14 b. Use a basis representative of the point in time at the beginning of the current index  
15 term for the option cost. The company shall not change this basis during the index term; and

16 c. Calibrate the method and parameters for the option cost to capital markets based option  
17 pricing.

18 2. A company shall not make adjustments for persistency, death, or utilization.

19 (b) Be eligible to take a reduction equal to the lesser of one hundred (100) basis points or  
20 the annual cost basis value, if the annualized option cost for the equity-indexed benefit is twenty-

1 five (25) basis points or more, and the equity-indexed benefit shall provide substantive  
2 participation under KRS 304.15-365(6).

3 (c) Prepare an actuarial certification signed by a member of the American Academy of  
4 Actuaries that the reduction complies with KRS 304.15-365(6) at the time that the contract form  
5 is filed and submitted.

6 (d) Annually prepare an actuarial certification in accordance with KRS 304.15-365(6)  
7 signed by a member of the American Academy of Actuaries with regard to ongoing compliance  
8 and submit it in conjunction with the filing of the annual statement.

9 (3) If the additional reduction of up to one hundred (100) basis points for equity-indexed  
10 benefits has been inappropriately taken, the commissioner [~~executive director~~] shall require the  
11 recalculation of all values for all affected policyholders without all or part of the additional  
12 reduction.

13 [~~Section 7. Effective Date. The requirements, implementation, and enforcement of this~~  
14 ~~administrative regulation shall begin on January 1, 2008.~~]



806 KAR 15:070  
READ AND APPROVED:



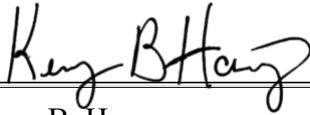
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Sharon P. Clark  
Commissioner, Department of Insurance

12/18/2020

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Date



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Kerry B. Harvey  
Secretary, Public Protection Cabinet

12/21/2020

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Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on March 22nd, 2021 at 500 Mero Street, Frankfort, KY 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on March 31st, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Abigail Gall  
Title: Executive Administrative Secretary  
Address: 500 Mero Street, Frankfort, KY 40601  
Phone: +1 (502) 564-6026  
Fax: +1 (502) 564-1453  
Email: [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 15:070  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth actuarial standards for minimum nonforfeiture benefits for annuities to implement the provisions of KRS 304.15-365.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set standards in accordance with KRS 304.15-365 and to provide for an actuarial certification of compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation implements the provisions of KRS 304.15-365 and standardizes the calculation of values and sets minimum nonforfeiture amounts for annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set the baseline actuarial requirements for annuities and require an actuarial certification of compliance with the regulation which adds a layer of consumer protection

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are to meet the drafting requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity to the amendments are to meet the drafting requirements so the administrative regulation is read more easily and meets the uniform standard set in Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the requirements in Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation will meet the drafting requirements and assist in the effective administration of KRS 304.15-365 by being more legible to entities that are affected by the enforcement of the administrative regulation.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the insurers and agents that are licensed to offer annuity products in Kentucky.
- (4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to calculate the minimum nonforfeiture benefits for annuities in accordance with this regulation, using their existing actuarial resources.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Entities will not incur any additional cost as this regulation is a national standard.
- (c) As a result of compliance, what benefits will accrue to the entities: This regulation is part of a package that standardizes regulation across the various states and should reduce the overall cost of doing business for regulated entities.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
- (a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.
- (b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.
- (9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR 15:070  
Contact Person: Abigail Gall  
Phone: +1 (502) 564-6026  
Email: abigail.gall@ky.gov

- (1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The department as the implementer of the administrative regulation.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.15-365(7)
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No expected revenue.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation should remain revenue neutral for subsequent years.
  - (c) How much will it cost to administer this program for the first year? There is no expected cost to administer this program.
  - (d) How much will it cost to administer this program for subsequent years? There is no expected cost for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

- (4) Revenues (+/-): Neutral
- (5) Expenditures (+/-): Neutral
- (6) Other Explanation: