

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-188

IRRC Number: 2098

(3) Short Title

Premium and Retirement Deposit Funds

(4) PA Code Cite

31 Pa. Code, Chapter 86, §§86.1-86.12

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter J. Salvatore, Regulatory Coordinator,  
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429  
Secondary Contact:

(6) Type of Rulemaking (check one)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of the amendments to Chapter 86 of Title 31 is to update the chapter such that it recognizes and makes provisions for the life insurance and annuity products which are currently being sold in Pennsylvania. When the chapter was adopted, life insurance policies and annuity contracts generally provided only for the payment of fixed premium amounts. In the current Pennsylvania marketplace, both fixed premium and flexible premium policies and contracts are marketed and sold.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and Sections 202 and 354 of The Insurance Company Law of 1921 (40 P.S. §§382 and 477b).

### **Regulatory Analysis Form**

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments to Chapter 86 are needed to clarify the applicability of the regulation to flexible premium life insurance policies and annuity contracts. Chapter 86 does not currently provide for this distinction or for appropriate limits for flexible premium policies or contracts. .

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Life insurers and the Commonwealth will benefit from the amendments to the regulation in that the amendments will clarify the applicability of the regulation to flexible premium life insurance policies and annuity contracts and establish clear deposit limits for monies deposited under premium deposit and retirement deposit funds of flexible premium policies and contracts. Residents who purchase flexible premium life insurance policies and annuity contracts will still be able to deposit funds under flexible premium life insurance policies and annuity contracts.

### Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party affected by Chapter 86. The amendments to the regulation provide for a limit on the amount of money that may be held by an insurer under a premium deposit fund of a flexible premium life insurance policy or annuity contract. It is highly unlikely that the amended limits will result in insurers collecting less money under a premium or retirement deposit fund.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All life insurance companies issuing in the Commonwealth life insurance policies and annuity contracts that contain premium deposit funds and retirement deposit funds.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In developing the rulemaking, the rulemaking underwent a 30-day public comment period. Comments were received from the Insurance Federation of Pennsylvania, Inc. favoring the adoption of the regulation. IRRC had no comments during its review.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There will be no immediate cost or savings effect associated with compliance.

### **Regulatory Analysis Form**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with this rulemaking since it will impose no compliance requirements on them.

(19) Provide a specific estimate of the costs and /or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no additional costs or savings to state government associated with this rulemaking since it does not impose additional requirements on the insurance industry, which the Department must monitor for compliance.

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

(20a) Explain how the cost estimates listed above were derived.

N/A

### Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

N/A

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of the rulemaking.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No other nonregulatory alternatives were considered since Chapter 86 is a current regulation and requires only revision to accommodate the current insurance products being sold in Pennsylvania and to provide fund deposit limits for each premium payment type product.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered since Chapter 86 is a current regulation and requires revision to accommodate the current insurance products being sold in Pennsylvania and to provide fund deposit limits for each premium payment type product.

### **Regulatory Analysis Form**

**(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

No.

**(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

Only a few states have adopted regulations to limit the amount of funds that may be placed under premium deposit funds and retirement deposit funds of life insurance policies and annuity contracts. Chapter 86 has been in effect since 1976, and during this time the regulation has not placed Pennsylvania at a competitive disadvantage. The rulemaking will clarify the applicability of the chapter to certain types of life insurance and annuity products and will not result in a competitive disadvantage for companies operating in Pennsylvania.

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

The rulemaking will not affect existing or proposed regulations of the Department or other state agencies.

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

No public hearings or informational meetings are anticipated.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The rulemaking does not change existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on the special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will take effect upon final approval by the legislative standing committees, the Independent Regulatory Review Commission and the Office of Attorney General and upon final publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.



CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU

(Pursuant to Commonwealth Documents Law)

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REGULATORY  
REVIEW COMMISSION

2098

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality. Attorney General

Copy below is hereby certified to be a true and correct  
copy of a document issued, prescribed or promulgated  
by:

Copy below is hereby approved as to form and  
legality. Executive or Independent Agencies

By \_\_\_\_\_  
(Deputy Attorney General)

Insurance Department



(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-188

5/2/00

DATE OF APPROVAL

Date of Approval

DATE OF ADOPTION: \_\_\_\_\_

(DEPUTY GENERAL COUNSEL)  
~~(CHIEF COUNSEL, INDEPENDENT AGENCY)~~  
(STRIKE INAPPLICABLE TITLE)

BY:   
M. Diane Koken

Insurance Commissioner

→ Check if applicable. No Attorney General  
approval or objection within 30 days after  
submission.

→ Check if applicable.  
Copy not approved. Objections  
attached.

TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR  
SECRETARY)

**Insurance Department**

**Notice of Final Form Rulemaking**

31 PA Code, Chapter 86  
§§86.1-86.12

**Premium and Retirement Deposit Funds**

## **PREAMBLE**

The Insurance Department (Department) hereby amends Chapter 86, §§ 86.1-86.12, Premium and Retirement Deposit Funds, as set forth in Annex A. The Department is publishing the amendment of the regulation as a final form rulemaking.

### **Statutory Authority**

The Department is amending the regulation under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and sections 202 and 354 of The Insurance Company Law of 1921 (40 P.S. §§ 382 and 477b).

### **Comments and Response**

A Notice of Proposed Rulemaking for this Regulation was published at 30 Pa.B. 886 (February 19, 2000) with a 30-day comment period ending January 31, 2000. During the 30-day comment period, comments were received from Insurance Federation of Pennsylvania, Inc. (IFP) in favor of the regulation.

During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department.

### **Affected Parties**

The rulemaking applies to all insurers and fraternal benefit societies marketing life insurance policies and who are licensed to do the business of life insurance in this Commonwealth.

### **Fiscal Impact**

#### *State Government*

There is anticipated to be no increase in cost to the Department resulting from the recognition within the modified Chapter of flexible premium life insurance and annuity products. The establishment of limits for each type of premium payment contract should not substantially increase compliance monitoring by the Department.

#### *General Public*

There will be no adverse fiscal impact on consumers who purchase life insurance policies and annuity contracts and place money in the premium deposit funds or retirement deposit funds of the policies or contracts.

### *Political Subdivisions*

The rulemaking will have no fiscal impact on political subdivisions.

### *Private Sector*

It is anticipated that the rulemaking will have a fiscal impact on insurance companies and fraternal benefit societies to the extent that there will be, in contrast to prior practice, a clear limit on the amount of money that may be held by insurers under a premium deposit fund of a flexible premium life insurance policy. The Department believes it unlikely that this new limit will result in insurers collecting substantially less money in connection with life insurance policies.

### **Paperwork**

The adoption of this rulemaking will not impose additional paperwork on the Department or the insurance industry. Although the rulemaking imposes additional deposit limits on premium deposit funds and retirement deposit funds, it does not impose additional requirements resulting in additional paperwork.

### **Effectiveness/Sunset Date**

This rulemaking becomes effective upon final publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

### **Contact person**

Any questions regarding this regulation should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, phone (717) 787-4429. In addition, questions or comments may be e-mailed to [psalvato@ins.state.pa.us](mailto:psalvato@ins.state.pa.us) or faxed to (717) 772-1969.

### **Regulatory review**

Under section 5(a) of the Regulatory Review Act, (71 P.S. §745.5(a)) the agency submitted a copy of this regulation on February 9, 2000 to the Independent Regulatory Review Commission (IRRC) and to the Chairmen of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

In preparing this final form regulation, the Department considered all comments received from IRRC, the Committees and the public. This final form regulation was (deemed) approved by the Senate and House Committees \_\_\_\_\_. In accordance with section 5a(d) of the Regulatory Review Act (71

P.S. §745.5a(d)), IRRC met on \_\_\_\_\_ and (deemed) approved the regulation in accordance with section 5a(e) of the Regulatory Review Act (71 P.S. §745.5a(e)).

### **Findings**

The Commissioner finds that:

- (1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No240) (45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.
- (2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

### **Order**

The Commissioner, acting under the authorizing statutes, orders that:

- (1) The regulations of the Department, 31 Pa. Code, are amended by adopting §§ 86.1-86.12, to read as set forth in Annex A.
- (2) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.
- (3) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (4) The order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. Diane Koken  
Insurance Commissioner

CONTINUATION SHEET FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
Pursuant to Commonwealth Documents Law

ANNEX A

**TITLE 31. INSURANCE. PART VI. LIFE INSURANCE. CHAPTER 86. PREMIUM  
AND RETIREMENT DEPOSIT FUNDS.**

Sec.

- 86.1. Definitions.
- 86.2. Purpose.
- 86.3. Limit on amounts.
- 86.4. Interest rates.
- 86.5. Reserve requirements.
- 86.6. Ownership.
- 86.7. Restriction on automatic premium loan.
- 86.8. Return of deposit funds.
- 89.9. Deferment of and charges against withdrawal.
- 89.10. Projection of results and report of fund balance.
- 89.11. Deceptive practices prohibited.
- 89.12. Exemption.

**§ 86.1. Definitions.**

The following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Premium deposit fund* - Amounts paid in and held for payments of future contractual obligations of policyholders or contractholders under an individual life insurance policy or an individual annuity contract.

*Retirement deposit fund* - Paid-in amounts and interests credited thereon held for the purchase at a future date of annuity benefits for the policyholder of an individual life policy or the contractholder of an individual annuity contract.

**§ 86.2. Purpose.**

[In transacting business, life insurance companies and fraternal benefit societies have been permitted, for the convenience of policyholders and contractholders, to accept funds for paying premiums or considerations falling due in the future. In recent years there has been increasing use of the deposits to provide a fund for purposes other than prepayment of premiums or considerations, the overuse of which may result in misuse of the underwriting powers authorized to life insurance companies. To prevent further overuse of these accounts, the Insurance Department requires stock and mutual life companies and fraternal benefit societies to accept deposits under an individual life insurance policy or an individual annuity contract only under the conditions and limitations set forth in this chapter.] In transacting business, life insurance companies and fraternal benefit societies, for the convenience of policyholders and contractholders, accept funds for paying premiums or considerations falling due in the future. Chapter 86 allows life insurance companies and fraternal benefit societies to accept deposits under an individual life insurance policy or an individual annuity contract only under the conditions and limitations set forth in this chapter. When this chapter was adopted, life insurance policies and annuity contracts generally provided for the payment of fixed premium amounts. Therefore, the chapter was designed to apply to fixed premium policies and contracts. In the current Pennsylvania marketplace, both fixed premium and flexible premium policies and contracts are marketed and sold and this chapter, as amended, recognizes a distinction between fixed premium policies and contracts, and flexible premium policies and contracts and establishes deposit limits which are applicable to monies held in premium deposit funds and retirement funds of both types of premium payment policies and contracts.

**§ 86.3. Limit on fund amounts.**

(a) The maximum amount which may be held by the insurer for payment of future premiums, according to provisions in a fixed premium life insurance policy, contract, rider or endorsement, is the present value of gross premiums payable in the future, discounted at the interest rate or rates guaranteed in the policy, contract, rider or endorsement.

(b) The maximum amount which may be held by the insurer for payment of future premiums, according to provisions in a flexible premium life insurance policy, contract, rider or endorsement, is the present value of the premium payments necessary to maintain the policy or contract in force to the maturity date, based on guaranteed charges and credits.

[(b)](c) The maximum amount which may be held by the insurer for payment of future annuity considerations, according to provisions in a fixed premium annuity [policy,] contract, rider or endorsement, is the present value of gross considerations payable in the future under the annuity contract, rider or endorsement, discounted at the interest rate or rates guaranteed.

[c](d) The maximum amount which may be held by the insurer in a retirement deposit fund, established according to provisions in a fixed premium life insurance policy or fixed premium annuity[policy], contract, rider or endorsement, is the sum of the gross premiums or gross considerations payable under the base life insurance policy or base annuity contract.

(e) The amount which may be held by the insurer in a retirement deposit fund, established according to provisions in a flexible premium life insurance policy, contract, rider or endorsement, is not subject to any maximum or other limit. The amounts held in a retirement deposit fund are subject to the requirements and provisions of Section 410A of the Insurance Company Law of 1921 (40 P.S. § 510.1) (relating to standard nonforfeiture law for life insurance).

(f) The amount which may be held by the insurer in a premium deposit fund or a retirement deposit fund, established according to provisions in a flexible premium annuity contract, rider or endorsement, is not subject to any maximum or other limit. The amounts held in a retirement deposit fund are subject to the requirements and provisions of Section 410C of the Insurance Company Law of 1921 (40 P.S. § 510b) (relating to standard nonforfeiture law for individual deferred annuities).

#### **§ 86.4. Interest rates.**

The interest rate or rates guaranteed to be paid on the amount held in a premium deposit fund or a retirement deposit fund shall be clearly stated in the policy, contract, rider or

endorsement. [The language] Language which tends to invite misrepresentation [, for example, at least 6%,] is prohibited.

**§ 86.5. Reserve requirements.**

Insurers are required to maintain reserves for a premium or retirement deposit fund according to the insurance laws and regulations of the Commonwealth.

**§ 86.6. Ownership.**

Ownership of the fund may not be vested in depositors other than the policyholder or contractholder unless the policy, contract, rider or endorsement provides otherwise.

**§ 86.7. Restriction on automatic premium loan.**

Unpaid premiums and considerations shall be paid from the deposit fund prior to application of any automatic premium loan unless the policyholder, contract holder or fund-owner selects otherwise.

**§ 86.8. Return of deposit funds.**

The funds shall be payable in cash upon death and may be used to increase nonforfeiture values for the policyholder or contract holder only.

**§ 86.9. Deferment of and charges against withdrawal.**

A provision shall be included to allow the fund-owner to withdraw the fund subject solely to the condition, if stated in the policy, contract, rider or endorsement, that reserves to the insurer the right to defer payment for 6 months. Charges against withdrawal shall be disclosed in the policy, contract, rider or endorsement.

**§ 86.10. Projection of results and report of fund balance.**

If sales promotion literature illustrates the projected results of the retirement deposit fund, the guaranteed interest rate or rates shall be used [irrespective] regardless of whether or not



projected results are also shown on the basis of the rate currently being paid or some lesser rate. The insurer shall furnish each owner of a retirement deposit fund with a written report on the accumulated balance of the fund at least once a year.

**§ 86.11. Deceptive practices prohibited.**

Sales promotion literature and contract forms may not create the impression that the funds are the same as a savings account or deposit in a banking or savings institution and the use of documents which bear resemblance to savings bank passbooks or similar items is prohibited.

**§ 86.12. Exemption.**

This chapter does not apply to variable life policies or variable annuity contracts. It also does not apply to policies, contracts, riders or endorsements issued for funding pension or profit-sharing plans which are qualified under the Internal Revenue Code of 1954 and are regulated by the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406)(88 Stat. 929).



**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT**

**OFFICE OF SPECIAL PROJECTS  
1326 Strawberry Square  
Harrisburg, PA 17120**

**Phone: (717) 787-4429  
Fax: (717) 772-1969  
E-mail: psalvato@ins.state.pa.us**

May 11, 2000

Mr. Robert Nyce  
Executive Director  
Independent Regulatory Review Comm.  
333 Market Street  
Harrisburg, PA 17101

Re: Insurance Department Final  
Form Regulation No. 11-188,  
Premium and Retirement  
Deposit Funds

Dear Mr. Nyce:

Pursuant to Section 5a(c) of the Regulatory Review Act, enclosed for your information and review is final form regulation 31 Pa. Code, Chapter 86, Premium and Retirement Deposit Funds.

The amendments to Chapter 86 will update the chapter in that it recognizes and makes provisions for the life insurance and annuity products which are currently being sold in the Commonwealth. When the chapter was adopted, life insurance policies and annuity contracts generally provided only for the payment of fixed premium amounts. In the current marketplace, both fixed premium and flexible premium policies and contracts are marketed and sold. The amendments establish a distinction between fixed premium policies and contracts, and flexible premium policies and contracts. The amendments provide for deposit limits that are applicable to monies held in premium deposit funds and retirement deposit funds of both fixed premium and flexible premium life insurance policies and annuity contracts.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore  
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

RECEIVED

I.D. NUMBER: 11-188  
SUBJECT: Premium and Retirement Deposit Funds  
AGENCY: DEPARTMENT OF INSURANCE

2000 MAY 11 PM 4:25  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
5-11-00	<i>B. Raphael</i>	HOUSE COMMITTEE ON INSURANCE
5-11-00	<i>Daniel Mitchell</i>	SENATE COMMITTEE BANKING & INSURANCE
5-11-00	<i>Jessica Villanueva</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

May 5, 2000