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(1) Agency -		Ĥ	EVIEW COMMISSION	
Insurance Department				
(2) I.D. Number (Governor's Office Use)			McGinley	
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11-188			IRRC Number: 2098	
(3) Short Title	<u></u>	1		
Premium and Retirement Deposit Funds	ł			
(4) PA Code Cite	(5) Agency Contact	s & Tel	ephone Numbers	
31 Pa. Code, Chapter 86, §§86.1-86.12 Primary Contact: Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429 Secondary Contact:				
(6) Type of Rulemaking (check one)	(7) Is a	120-Da	ay Emergency Certification Attached?	
 Proposed Rulemaking Final Order Adopting Regulation Final Order, Proposed Rulemaking 	he Attorney General he 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).				
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Regulator, Analysis Forma

(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.

(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 proposed rulemaking, comments were solicited from the Insurance Federation of Pennsylvania, Inc. Comments from this organization were taken into consideration in preparing the proposed amendments to Chapter 86.

(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 Attalysia 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 proposed 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 proposed rulemaking since it does not impose additional requirements on the insurance industry, which the Department must monitor for compliance.

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SAVINGS:	Year	Year S	Year S	Year S	Year S	Year S
Regulated Community					ļ	J
<u> </u>						
Local Government						
State Government						
Total Savings						1
COSTS:						+
Regulated Community						1
Local Government						1
State Government					-	1
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						1
Total Revenue Losses						1

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

Program	FY -3	FY -2	FY -1	Current FY
	••• <u>•</u> ••••••••••••••••••••••••••••••••			

(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 proposed 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.

(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 proposed 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 proposed 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.

(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 proposed 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 proposed 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 proposed rulemaking will take effect upon final approval by the legislative standing committees, the Office of Attorney General and the Independent Regulatory Review Commission and upon final publication in the <u>Pennsylvania Bulletin</u>.

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

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

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FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU (Pursuant to Commonwealth Documents Law)		2000 FEB -9 PM 4: 10 REVIEW COMMISSION	
	# 2098	D	O 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
anti J. Que	Insurance Department		BY Liouasland
(Deputy Attorney General) JAN 2 3 2000	(AGENCY) DOCUMENT/FISCAL NOTE NO11-188		L 18/00 DATE OF APPROVAL
Date of Approval	DATE OF ADOPTION:		(DEPUTY GENERAL COUNSEL) (G HIEF COUNSEL, INDEPENDENT AGENC Y) (STRIKE INAPPLICABLE TITLE)
 Check if applicable. Copy not approved. Objections attached. 	M. Diane Koken Insurance Commissi TITLE: (EXECUTIVE OFFICER, CHAIR SECRETARY)	ioner	→ Check if applicable. No Attorney General approval or objection within 30 days after submission.

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Insurance Department

Notice of Proposed Rulemaking

31 PA Code, Chapter 86 §§86.1-86.12

Premium and Retirement Deposit Funds

PREAMBLE

The Insurance Department ("Department") proposes to amend Title 31 of the Pennsylvania Code, Chapter 86 (relating to premium and retirement deposit funds), to read as set forth in Annex A. This regulation is being proposed 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).

Purpose

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.

The proposed amendments to Chapter 86 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.

Explanation Of Regulatory Requirements

The following is a description of the change contained in the proposed rulemaking.

Section 86.3 (relating to limit on amounts) provides for limits on the amount of money that a company or fraternal benefit society may hold under a premium deposit fund or retirement deposit fund for a life insurance policy or annuity contract. The proposed rulemaking amends this section to provide for diversity in treatment of fixed premium policies and contracts, and flexible premium policies and contracts. Further, this section, as amended, would establish the applicable deposit limits under fixed premium and flexible premium policies and contracts.

Section 86.4 (relating to interest rates) is being modified to make the section more understandable.

Minor editorial changes were made to § 86.9 (relating to deferment of and charges against withdrawal).

External Comments

In developing the proposed rulemaking, comments were solicited from the Insurance Federation of Pennsylvania, Inc. Comments from this organization were taken into consideration in preparing the proposed amendments to Chapter 86.

Affected Parties

This proposed rulemaking will apply to life insurance companies and fraternal benefit societies marketing life insurance policies and annuity contracts 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 proposed rulemaking will have no fiscal impact on political subdivisions.

Private Sector

It is anticipated that the proposed 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 proposed 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

The proposed rulemaking will become effective upon final adoption and publication in the <u>Pennsylvania Bulletin</u>. No sunset date has been assigned.

Contact Person

Questions or comments concerning this proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days of the publication of this proposed rulemaking in the <u>Pennsylvania</u> Bulletin. Questions or comments may also be e-mailed to <u>psalvato@ins.state.pa.us</u> or faxed to (717) 772-1969 or (717) 705-3873.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)) the agency submitted a copy of this proposed regulation on _______ to the Independent Regulatory Review Commission 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.

If the Commission has any objections to any portion of the proposed rulemaking, it will notify the agency within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the regulations.

> 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 paving 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.

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§ 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 <u>a fixed premium annuity</u> [policy,] contract, rider or endorsement, is the present value of gross considerations payable in the future <u>under the</u> <u>annuity contract</u>, 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 <u>a fixed premium life insurance policy or fixed</u> 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.

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§ 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 fundowner 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.

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§ 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.

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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 profitsharing 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) 705-3873 E-mail: psalvato@ins.state.pa.us

February 9, 2000

Mr. Robert Nyce Executive Director Independent Regulatory Review Comm. 333 Market Street Harrisburg, PA 17120

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

Dear Mr. Nyce:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 86, §§ 86.1-86.12, Premium and Retirement Deposit Funds.

The purpose of the amendments is to update the chapter such that it recognizes and makes provisions for the life insurance and annuity products that 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. The proposed 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,

Peter J. Salvatore Regulatory Coordinator

11-188p

	REGU	LATORY REV	RECEIVED			
I.D. NUMBER SUBJECT: AGENCY:	: 11-188 Premium and Retirement DEPARTMENT OF INS	-	2000 FEB - 9 PH 4: 10 HOULDEN COMMISSION REVIEW COMMISSION			
Х	TYPE Proposed Regulation Final Regulation Final Regulation with Notice of P 120-day Emergency Certification 120-day Emergency Certification Delivery of Tolled Regulation a. With Revisions	of the Attorney	king Omitted General			
FILING OF REGULATION DATE SIGNATURE DESIGNATION 2.9.03 Meils (a.ha.Y HOUSE COMMITTEE ON INSURANCE 3/9/100 Mexice Action 3/9/100 Mexice SENATE COMMITTEE ON BANKING & INSURANCE 2/9/100 Mexice INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL 2/9/100 Mayor Garces						
February 4, 20	00					

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE