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INDEPENDENT REGULATORY
REVIEW COMMISSION

May 13, 2002

TO: Peter Salvatore
Regulatory Coordinator
PA Insurance Department

Fiona Wilmarth
Regulatory Analyst
Independent Regulatory Review Commission

FR: Vince Phillips
Lobbyist

RE: *Comments on Proposed Rulemaking*
Life Insurance; Annuity Disclosure [31 PA Code. Chapter 83a]

Thank you for receiving these comments on the proposed Rule from the Independent Insurance Agents of Pennsylvania (IIAP), the Pennsylvania Association of Insurance and Financial Advisors (PAIFA), and the Pennsylvania Association of Health Underwriters (PAHU)

While supportive in general of the proposed Rule, we find that the text appears not to specifically demonstrate the limits to liability of insurance producers in communicating annuity disclosures. The insurer is the 'manufacturer' of the annuity product. The agent or broker is the distribution system. To put it in a different commercial context, is the grocery store legally responsible if a manufacturer of chocolate does not accurately list the calorie count on the individual candy bar? IIAP and PAIFA believe that the grocer is distributing the manufacturers' product in good faith and should not be penalized if the manufacturer does not properly disclose the ingredients. Likewise, we believe that the grocer should not come up with its own list of ingredients for the candy bar because the manufacturer bears that disclosure responsibility.

83a.6 Use and non-modification of annuity disclosure system results states that a producer shall only use and may not withhold, alter, change, or in any way modify the results of an annuity disclosure system provided by an insurer or approved in writing by an officer of the insurer or another person as the insurer may designate for that purpose. The intent is clearly that agents and brokers must not create their own disclosure system that purports to represent the annuity when in fact it was not authorized and in fact be a distortion of the original intent.

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An agent or broker who faithfully uses the insurer's annuity disclosure materials should be protected from Department enforcement action if the company material is found to be non-compliant with this Rule. But the Rule does not say that. Neither section 83a.6 or 83a.9 (Penalties) gives any sort of 'hold harmless' to the producer who acted responsibly in presenting the insurer's annuity disclosure. IIAP, PAIFA, and PAHU feel that new language is needed to clearly limit the producer's liability. The agent or broker should not be liable for using inaccurate company-generated material.

Please consider this recommendation under 83a.9. Penalties (a):

For purposes of this section, a producer shall be held harmless by the department if found to have used without altering disclosure information supplied by an insurer found to be in violation of this Rule.

Thank you for affording the Independent Insurance Agents of Pennsylvania, the Pennsylvania Association of Insurance and Financial Advisors, and the Pennsylvania Association of Health Underwriters this opportunity to comment.

CC: Tim Wonder, IIAP Executive Vice President
Scott Jackson CAE, PAIFA CEO
Mark Shaffer, PAHU President
Jack Ulrich, IIAP Legislative Chairman
Ross Schrifman, PAHU Legislative Chairman