



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

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May 4, 2004

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

Re: Insurance Department Final Form Regulation No. 11-200, Annuity Disclosure

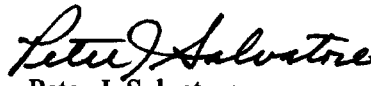
Dear Mr. Nyce:

The Insurance Department is hereby withdrawing regulation number 11-200, Annuity Disclosure, from your consideration at this time.

The Department may resubmit this regulation in proposed format at a future date.

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

Sincerely yours,


Peter J. Salvatore
Regulatory Coordinator

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<h1 style="margin: 0;">Regulatory Analysis Form</h1>		<p>This space for use by IRRC RECEIVED 2002 APR -4 AM 9:38 REGULATORY COMMISSION</p>
<p>(1) Agency</p> <p>Insurance Department</p>		<p>IRRC Number: 2265</p>
<p>(2) I.D. Number (Governor's Office Use)</p> <p>11-200</p>		
<p>(3) Short Title</p> <p>Annuity Disclosure</p>		
<p>(4) PA Code Cite</p> <p>31 Pa Code, Chapter 83a, §§83a 1-83a.9</p>	<p>(5) Agency Contacts & Telephone Numbers</p> <p>Primary Contact: Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429 Secondary Contact:</p>	
<p>(6) Type of Rulemaking (check one)</p> <p><input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted</p>	<p>(7) Is a 120-Day Emergency Certification Attached?</p> <p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor</p>	
<p>(8) Briefly explain the regulation in clear and nontechnical language.</p> <p>The purpose of this rulemaking is to provide new consumer protections that apply to certain individual annuity contracts and riders and group certificates and certificate riders. Insurers and insurance producers selling certain types of annuity products in the Commonwealth will be required to provide their consumers with a simplified document that discloses important components of the annuity contract. With the information provided in the disclosure statement, an insurance consumer will be able to more adequately and completely understand the nature of the annuity product that is being purchased or applied for, thereby allowing the consumer to make a more informed decision on the suitability of such contracts.</p>		
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p>This proposal is made pursuant to the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P S. §§ 1171.1 et seq.) (as such authority is further explained in <u>PALU v Insurance Department</u>, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Insurance Commissioner of the Commonwealth of Pennsylvania has determined that the inadequate disclosure of key elements of annuity contracts by members of the insurance industry constitutes an unfair method of competition and an unfair or deceptive act or practice.</p>		

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 Insurance Department seeks to amend Chapter 83a, §§83a.1-83a.9 in order to provide more consumer protection in the sale of annuities. It is in the public's interest to have this consumer protection.

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

There are no public health, safety, environment 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.)

Consumers will benefit from the regulation to the extent that it will require insurers and insurance producers to provide a simplified disclosure statement that explains the key elements of an annuity contract.

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 as a result of the amendment of this regulation.

(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.)

The regulation applies to all insurers and insurance producers licensed to do the business of annuity sales in the Commonwealth.

(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.

Comments regarding the amendments of this regulation were solicited from the various trade associations representing the insurance industry. Comments were received from the Insurance Federation of Pennsylvania, Inc., the Pennsylvania Association of Insurance and Financial Advisors and the Independent Insurance Agents of Pennsylvania. These comments were taken into consideration in the drafting of the rulemaking.

(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.

The amendment of the regulation will have an impact on costs for insurance companies that market and sell annuities in the Commonwealth. Because the costs will amount only to the production of the disclosure forms (which will vary from one insurer to another) that will be required by the regulation, it is difficult to provide a specific estimate of such costs.

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.

(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 costs or savings associated to state government associated with this rulemaking.

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
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(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.

There will be some cost associated with the promulgation of this regulation. Insurers will be required to provide consumers with a disclosure that must be on a form that is separate from other insurance documents such as applications or policies. This form will have cost associated with it, namely the costs related to the production and printing of the form, and it is difficult to provide a specific estimate of the costs related to compliance with this regulation. However, the Department believes that these costs will be minimal, especially when considered in comparison to the significant benefit of providing consumers with sufficient information to make informed decisions regarding the purchase of annuity contracts.

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

Amending Chapter 83a, §§83a1-83a.9 is the most efficient method to achieve the consumer protection that is required. No other alternatives were considered.

(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. The amendment of the regulation is the most efficient method of updating the regulatory requirements.

Regulation 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?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states. In fact, many states are requiring that insurers provide some type of consumer disclosure when annuities are being sold or solicited. The adoption on this regulation will allow Pennsylvania to provide enhanced consumer protections associated with the marketing and selling of annuities in the Commonwealth.

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

No.

(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
<p>(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.</p> <p>The amendment of the regulation imposes no additional paperwork requirements on the Department. For insurers, there will be additional paperwork associated with providing the disclosure required by the regulation to consumers purchasing annuity contracts in the Commonwealth. The Department has not prescribed a specific form the disclosure; instead it has allowed the industry sufficient flexibility to develop a customized form that best suits the needs of the particular insurer.</p>
<p>(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.</p> <p>The rulemaking will have no effect on special needs of affected parties.</p>
<p>(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?</p> <p>The rulemaking will undergo a 30-day public comment period and will take effect upon approval of the final form regulation by the legislative standing committees, the Office of the Attorney General, and the Independent Regulatory Review Commission and upon final publication in the <i>Pennsylvania Bulletin</i>.</p>
<p>(31) Provide the schedule for continual review of the regulation.</p> <p>The Department reviews each of its regulations for continued effectiveness on a triennial basis.</p>

CDL-1 <div style="text-align: center;"> FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU </div> <p style="text-align: center;">(Pursuant to Commonwealth Documents Law)</p>		<div style="text-align: center;"> RECEIVED 2002 APR -4 AM 9:38 LEGISLATIVE REFERENCE BUREAU </div>
# 2265		DO NOT WRITE IN THIS SPACE
<p>Copy below is hereby approved as to form and legality Attorney General</p> <p style="font-size: 1.2em; font-family: cursive;">Cristina S. Caputo</p> <p>By _____ (Deputy Attorney General)</p> <p style="text-align: center; font-size: 1.2em; margin-top: 20px;">MAR 29 2002</p> <p style="text-align: center;">Date of Approval</p> <p style="font-size: 0.8em; margin-top: 20px;">→ Check if applicable Copy not approved Objections attached</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by</p> <p style="text-align: center; font-size: 1.1em;">Insurance Department</p> <p style="text-align: center;">(AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO <u>11-200</u></p> <p>DATE OF ADOPTION _____</p> <p>BY <u>M. Diane Koken</u> M. Diane Koken Insurance Commissioner</p> <p>TITLE _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality Executive or Independent Agencies</p> <p style="font-size: 1.2em; font-family: cursive;">John V. Tunney</p> <p>BY _____</p> <p style="text-align: center; font-size: 1.2em; margin-top: 20px;">3/7/02</p> <p style="text-align: center;">DATE OF APPROVAL</p> <p style="text-align: center; font-size: 0.8em;">(DEPUTY GENERAL COUNSEL) (CHIEF COUNSEL, INDEPENDENT AGENCY) (STRIKE INAPPLICABLE TITLE)</p> <p style="font-size: 0.8em; margin-top: 20px;">→ Check if applicable No Attorney General approval or objection within 30 days after submission</p>

NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 83a
§§83a.1-83a.9

Annuity Disclosure

Preamble

The Insurance Department (Department) proposes to amend §§ 83a.1-83a.9 to read as set forth in Annex A. The proposal is made under the authority of sections 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412). Likewise, this proposal is made pursuant to the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 et seq.) (as such authority is further explained in PALU v. Insurance Department, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Insurance Commissioner of the Commonwealth of Pennsylvania has determined that the inadequate disclosure of key elements of annuity contracts by members of the insurance industry constitutes an unfair method of competition and an unfair or deceptive act or practice.

Purpose

The purpose of this rulemaking is to amend Chapter 83a in order to provide new consumer protections that apply to certain individual annuity contracts and riders and group certificates and certificate riders. This proposed regulation would require insurers and insurance producers selling certain types of annuity products in the Commonwealth to provide their consumers with a simplified document that discloses important components of the annuity contract. These components include, inter alia, any applicable interest rates, bonuses and persistency credits as well as any fees, surrender charges or value reductions caused by contract withdrawals. With the information provided in the disclosure statement, an insurance consumer will be able to more adequately and completely understand the nature of the annuity product that is being purchased or applied for, thereby allowing the consumer to make a more informed decision on the suitability of such contracts. This proposed rulemaking is not intended to prohibit insurers or producers from using, in the sale of an annuity contract, additional material or disclosures which are not in violation of this proposed regulation or any other law or regulation currently in effect.

The Department worked closely with the Commonwealth's insurance industry on the development of this regulation. The Department shared this regulation with the agent associations and the insurance industry trade groups. Informal meetings were held with members of the industry to discuss earlier drafts of the regulation. Comments were received from members of the agents association and the insurance industry, and these comments were taken into consideration during the drafting of this proposed rulemaking.

Explanation of Regulatory Changes

Section 83a.1 (relating to purpose) is being proposed to explain the purpose of the chapter.

Section 83a.2 (relating to applicability) explains the exemptions to the rulemaking.

Sections 83a..3 (relating to definitions) defines the terms used in this rulemaking.

Section 83a.4 (relating to disclosure statement delivery) describes the procedures to be followed for face-to-face solicitation and solicitations made in other manners, such as through telephonic and electronic means.

Section 83a.5 (relating to disclosure statement) describes the elements that are necessary in order to provide a consumer with a complete and adequate disclosure statement.

Section 83a.6 (relating to use and non-modification of annuity disclosure system results) provides that a producer may not alter or modify the results of an annuity disclosure system that is provided or approved in writing by the insurer.

Section 83a.7 (relating to Department right of review of disclosure statements) describes when the Department may ask for submission of a completed disclosure statement.

Section 83a.8 (relating to report to contract owners) describes the insurers responsibility to provide a report at least annually to consumers purchasing certain deferred annuity contracts.

Section 83a.9 (relating to penalties) describes the enforcement actions and penalties that the Department may consider for violating the provisions of this chapter.

Fiscal Impact

There will be a minor fiscal impact as a result of the proposed rulemaking. Insurers will be required to provide a disclosure to the consumer. The disclosure must be separate from the annuity contract, thereby creating some additional costs will be incurred in the production and provision of the disclosure. Any fiscal impact on insurers or insurance producers is expected to be relatively minimal, especially when compared to the important value that consumers will gain in being provided the disclosure statements for consideration when purchasing annuity contracts.

Paperwork

The proposed rulemaking will affect all licensed insurers and insurance producers that sell or market annuities in this Commonwealth.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@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)), on April 4, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days after the close of the Committees' review. 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 Department, 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 IV.—LIFE INSURANCE. CHAPTER 83a - Annuity Disclosure.

Sec.

- 83a.1. Purpose.
- 83a.2. Applicability.
- 83a.3. Definitions.
- 83a.4. Disclosure statement delivery.
- 83a.5. Disclosure statement.
- 83a.6. Use and non-modification of annuity disclosure system results.
- 83a.7. Department right of review of disclosure statements.
- 83a.8. Report to contract owners.
- 83a.9. Penalties.

§ 83a.1. Purpose.

The purpose of this chapter is:

- (1) To provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education.
- (2) To specify the minimum information which must be disclosed and the method for disclosing the information in connection with the sale of annuity contracts.
- (3) To ensure that purchasers of annuity contracts understand certain basic features of the contracts being purchased.

§ 83a.2. Applicability.

This chapter applies to all individual annuity contracts and riders and group certificates and certificate riders except transactions involving the following:

- (1) Group annuities used to fund prearranged funeral contracts.
- (2) Registered or non-registered variable annuities, or other registered products subject to the prospectus delivery requirements of the Securities Act of 1933 (15 U.S.C. 77a).
- (3) Immediate annuities that do not contain any non-guaranteed elements.

(4) Annuity contracts used to fund any of the following plans:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act of 1974 (ERISA) (29 U.S.C. 1001 et seq.).

(ii) A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code (26 U.S.C. 401(a), 401(k) or 403(b)), where the plan, for purposes of ERISA, is established or maintained by an employer.

(iii) A governmental or church plan as defined in section 414 of the Internal Revenue Code (26 U.S.C. 414).

(iv) A deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC (26 U.S.C. 457).

(v) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(5) Notwithstanding paragraph (4), the requirements of this chapter apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among 2 or more fixed annuity providers and there is a direct solicitation of the individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation does not include any meeting held by a producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement.

(6) A structured settlement annuity.

§ 83a.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Agent – As defined in section 601 of the Insurance Department Act of 1921 (40 P.S. § 231).

Application – The first form used by the producer or the insurer that constitutes or captures the applicant's request for an annuity contract or that captures from the applicant information needed to issue an annuity contract.

Bonus – An amount credited to the account value, cash surrender value or annuitization value of a contract in addition to the credited interest rates.

Broker – As defined in section 622 of the Insurance Department Act of 1921 (40 P.S. § 252).

Commissioner – The Insurance Commissioner of the Commonwealth.

Contract – Individual annuity contract or rider or group annuity certificate or certificate rider.

Contract owner – The owner named in the annuity contract or certificate holder in the case of a group annuity contract.

Department – The Insurance Department of the Commonwealth.

Determinable elements – The premiums, crediting interest rates, benefits, values, bonuses, persistency credits, non-interest based credits, charges, fees and elements of formulas used to determine any of these that are guaranteed at issue but not determined until some point in time after issue. The processes or methods that are applied to derive the determinable elements are guaranteed at issue and not subject to insurer discretion. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

Direct response solicitation – A solicitation of an annuity through a sponsoring or endorsing organization or individually through the mail, telephone, Internet, or other mass communication medium.

Equity indexed annuity – An annuity contract with interest credits or benefits that are linked to an external equity reference or an equity index.

Generic name – A short title descriptive of the annuity contract, any supplemental built in benefit being disclosed. Examples of acceptable generic names are “single premium deferred annuity” and “equity indexed deferred annuity”.

Guaranteed elements – The premiums, crediting interest rates, benefits, values, bonuses, persistency credits, non-interest based credits, charges, fees and elements of formulas used to determine any of these, that are guaranteed and determined at issue of the contract. An element is considered guaranteed if all of the underlying elements that are used in its calculation are guaranteed.

Guaranteed minimum interest rate – The underlying guaranteed interest rate.

Insurer – A life insurance company licensed under section 202 of The Insurance Company Law of 1921 (40 P.S. § 382) or a fraternal benefit society licensed under the Fraternal Benefit Societies Code (40 P.S. §§ 1142-101 et seq.).

Internet – The global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the transmission control protocol/internet protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or “common carrier” electronic delivery systems or similar media.

Non-guaranteed elements – The premiums, crediting interest rates, benefits, values, bonuses, persistency credits, non-interest based credits, charges, fees and elements of formulas used to determine any of these, that are subject to insurer discretion and are not guaranteed at issue of the contract. An element is considered non-guaranteed if any of the underlying elements that are used in its calculation are non-guaranteed.

Producer – An agent or broker.

Prominent type – Font or formatting techniques which differentiate selected text from other text. The term includes, for example, capital letters, contrasting color and underscoring.

Structured settlement annuity – A qualified funding asset as defined in section 130(d) of the I.R.C., 26 U.S.C. 130(d) or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

§ 83a.4. Disclosure statement delivery.

(a) *Face-to-face solicitation.* When the application for an annuity contract to which this chapter applies is taken in a face-to-face meeting, the applicant shall be given an annuity disclosure statement in compliance with this chapter no later than the time the application for the annuity is signed.

(b) *Other than face-to-face solicitation.* When the application for an annuity contract to which this chapter applies is taken by means other than in a face-to-face meeting, the applicant shall be provided with an annuity disclosure statement in compliance with this chapter no later than 5 business days after the completed annuity application is received by the insurer or producer or at the time of contract delivery if less than 5 business days after the completed annuity application is received by the insurer.

(1) With respect to an application received as a result of a direct response solicitation through the mail, providing the disclosure in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the delivery requirement of subsection (b).

(2) With respect to an online application via the Internet, taking reasonable steps to make available for viewing, printing, saving or downloading to a file from the marketing website for at least 7 days after application shall be deemed to satisfy the delivery requirement of subsection (b).

§ 83a.5. Disclosure statement.

(a) *Disclosure statement requirements.* The following information shall be included in the disclosure statement:

(1) A prominent type title as follows: Annuity Disclosure Statement.

(2) The name and home office address (city and state) of the insurer to whom application will be made and a mailing address of the insurer's home, executive or administrative office to which correspondence should be addressed.

(3) The identification of the contract, any rider or supplemental benefit built into the contract, including:

(i) The fact that the contract is an annuity.

(ii) The generic name of the contract, any supplemental built-in benefit or any rider.

(4) A description of the contract and its specific features, relating to the annuity solicited and applied for, emphasizing its long-term nature, including examples where appropriate. The examples may be based on assumed premiums. The description shall include:

(i) The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

(ii) An explanation of the initial crediting rate, the duration of the initial crediting rate, and the fact that future crediting rates may change from time to time and are not guaranteed.

(iii) A description, whether or not stated in the contract, of any adjustments in the credits, charges or settlement option rates necessary to offset the cost to the insurer for providing the bonus (for example, the interest credit will be 1% less than the rate that would be credited if the contract did not contain a bonus). If because of the pricing structure, an explicit expense charge or reduction in interest credits can not be determined, a general description that the expense charges may be higher or interest credits lower than the charges or credits for a contract without the bonus and that the amount of the charges or reduction in interest credits may exceed the amount of the bonus or an alternative description that provides the same level or degree of disclosure and is found acceptable by the Department.

(iv) Any value reductions caused by withdrawals from the contract or surrender of the contract

(v) The values used to determine the annuity income payments.

(vi) If applicable, an explanation that the values upon surrender of the contract are less than the values used to determine the annuity income payment(s).

(vii) How values in the contract can be accessed.

(viii) Periodic income options with an explanation of the guaranteed and non-guaranteed basis.

(ix) The death benefit, if available, and how it is calculated.

(x) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

(xi) The impact of any rider, such as a long-term care rider or disability surrender fee waiver rider, on the contract benefits.

(b) *First Page Declarations.* The first page of the disclosure statement shall include the information required by (a)(1) and the descriptions concerning the following:

(1) Interest rates.

(2) Bonuses and persistency credits.

(3) Charges and fees.

(4) Surrender charges.

(5) Value reductions caused by contract withdrawals or surrenders

(6) Any difference between the surrender value and the value used to determine the annuity income payment.

(c) *Non-guaranteed disclosure.* Any nonguaranteed element amounts appearing in the annuity disclosure statement shall be accompanied by a prominent type disclosure that the amounts are not guaranteed and are subject to change by the insurer.

(d) *Right to examine contract.* The disclosure statement shall include the language of the applicable right to examine contract provision required by section 410E of the Insurance Company Law (40 P. S. § 510d).

(e) *Page numbers.* Each page of the disclosure statement shall be numbered and show its relationship to the total number of pages in the disclosure statement.

(f) *Language of statement.* Terms used in the disclosure document shall be written in terms that are not confusing or misleading to a person of average intelligence. Terminology that would not be ordinarily understood by a person of average intelligence shall be defined or explained.

§ 83a.6. Use and non-modification of annuity disclosure system results.

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 such other person as the insurer may designate for such purpose.

§ 83a.7. Department right of review of disclosure statements.

The Department at its discretion may request the submission of a completed disclosure statement.

§ 83a.8. Report to contract owners.

A report shall be provided, at least annually, to the contract owner of a deferred annuity during the accumulation period and to the contract owner of a deferred or immediate annuity during the payout period if the contract provides for non-guaranteed elements during the payout period. The report shall be provided without charge.

(1) The report for a non-equity indexed annuity shall contain at least the following information:

- (i) The beginning and ending date of the current report period
- (ii) The account value, if any, at the beginning of the current report period and at the end of the current report period.
- (iii) The cash surrender value, if any, at the end of the report period.
- (iv) For an annuity which provides for an adjustment in the cash surrender values based on changes in the market value of the assets underlying the contract, a statement that the cash surrender value includes a reduction for the surrender charge and for either a market value adjustment or a total return adjustment.
- (v) The amounts, if any, that have been credited or debited to the contract during the current report period. The credited and debited amounts shall be identified by type; for example, premium payments, interest credits, bonus credits, persistency credits, expense charges, withdrawal amounts and withdrawal charges.
- (vi) The amount of outstanding loans, if any, as of the end of the current report period.

(2) The report for an equity indexed annuity shall contain at least the following information:

- (i) The beginning and ending date of the current report period.
- (ii) The minimum guaranteed cash surrender value at the beginning of the current report period and at the end of the current report period.
- (iii) The amounts, if any, that have been credited or debited to the minimum guaranteed cash surrender value during the current report period. The credited and debited amounts shall be identified by type; for example, premium payments, interest

credits, bonus credits, persistency credits, expense charges, withdrawal amounts and withdrawal charges.

(iv) The vested index adjusted account value at the beginning of the current report period and at the end of the current report period.

(v) The amounts, if any, that have been credited or debited to the vested index adjusted account value during the current report period. The credited and debited amounts shall be identified by type; for example, premium payments, interest credits, bonus credits, persistency credits, expense charges, withdrawal amounts and withdrawal charges.

(vi) The cash surrender value, if any, at the end of the current report period.

(vii) The amount of outstanding loans, if any, as of the end of the current report period.

(3) The end of the current report period may not be more than 3 months prior to the date of the mailing of the report.

§ 83a.9. Penalties.

(a) For failing to make the required disclosure about the product being sold or otherwise violating this chapter, a producer may be subject to the penalties provided in:

(1) Section 639 of The Insurance Department Act of 1921 (40 P.S. § 279) for conduct that would disqualify a producer from the initial issuance of a certificate of qualification or a license under sections 604 or 622 of that act (40 P.S. § 234 or 252).

(2) Section 637 of The Insurance Department Act of 1921 (40 P.S. § 277) for misrepresenting the terms of an insurance policy.

(b) For failing to ensure the required disclosure about the product being sold or otherwise violating this chapter, an insurer may be subject to the penalties provided in section 350 of The Insurance Company Law of 1921 (40 P.S. § 475) for violation of sections 347- 349 of that act (40 P.S. §§ 472 – 474).

(c) For failing to ensure the required disclosure about the product being sold or otherwise violating this chapter, a fraternal benefit society may be subject to the penalties provided in section 610 of the Fraternal Benefit Society Code (40 P.S. §§ 1142-610).

(d) In addition to subsections (a) – (c), failure to make the required disclosures outlined in this chapter or otherwise violation this chapter may be considered a violation of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.15).

(e) The insurer shall bear the burden in any investigation, hearing or determination by the Department or the Commissioner to prove that a properly completed disclosure was provided to the annuity applicant as required by this chapter.



**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

April 4, 2002

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

Re: Insurance Department Proposed
Regulation No. 11-200, Annuity
Disclosure

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 83a, Annuity Disclosure.

The purpose of this rulemaking is to amend Chapter 83a in order to provide new consumer protections that apply to certain individual annuity contracts and riders and group certificates and certificate riders. This proposed regulation would require insurers and insurance producers selling certain types of annuity products in the Commonwealth to provide their consumers with a simplified document that discloses important components of the annuity contract.

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

Sincerely yours,

A handwritten signature in cursive script, reading "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

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

I.D. NUMBER: 11-200
SUBJECT: Annuity Disclosure
AGENCY: DEPARTMENT OF INSURANCE

TYPE OF REGULATION

- X 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

RECEIVED
2002 APR -14 AM 9:38
LEGISLATIVE COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4/4/02	<i>M. E. T. Hall</i>	HOUSE COMMITTEE ON INSURANCE
4/4/02	<i>Shelia E. Carhart</i>	
4/4/02	<i>Gregory M. Hylton</i>	SENATE COMMITTEE ON BANKING & INSURANCE
4/4/02	<i>B. McDaniel</i>	
4/4/02	<i>E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
	<i>Gary R. Hoff</i>	LEGISLATIVE REFERENCE BUREAU

April 2, 2002