



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

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September 5, 2002

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 in order to make further clarifications.

The Department is simultaneously submitting the revised regulation for your review.

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

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

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|--|--|---|--|
| <h1 style="margin: 0;">Regulatory Analysis Form</h1> | | <p style="margin: 0;">This space for use by IRRC</p> <p style="margin: 0;">2010-5 11 3:28</p> <p style="margin: 0;">IRRC Number: <i>2265</i></p> | |
| | | | |
| <p>(1) Agency</p> <p>Insurance Department</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</p> <p>Secondary Contact:</p> | |
| <p>(6) Type of Rulemaking (check one)</p> <p><input type="checkbox"/> Proposed Rulemaking</p> <p><input checked="" type="checkbox"/> Final Order Adopting Regulation</p> <p><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</p> <p><input type="checkbox"/> Yes: By the Attorney General</p> <p><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 rulemaking 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 as persons purchasing annuities in the Commonwealth will be provided with a simplified disclosure statement that identifies and explains the most important components of the annuity including interest rates, bonuses and surrender charges or fees.

(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 by the Department to sell annuities 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.

During the public comment period, joint comments were received from the Insurance Federation of Pennsylvania, Inc. and the American Council of Life Insurers (IFP/ACLI), and from the Independent Insurance Agents of Pennsylvania, the Pennsylvania Association of Insurance and Financial Advisors and the Pennsylvania Association of Health Underwriters (Agent Groups). Individual comments were received from the Travelers Insurance Company (Travelers) and Northwestern Mutual Life Insurance Company (Northwestern). In addition, during its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department.

(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, retention and distribution of the disclosure forms (which will vary from one insurer to another based upon the number and types of annuities sold) that will be required by the regulation, it is difficult if, not impossible, 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, printing, distribution and retention 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.

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?

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

(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 amendment of the regulation imposes no additional paperwork requirements on the Department. For insurers, there will be additional paperwork associated with providing and retaining the disclosure required by the regulation. 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.

(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 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?

In its proposed regulation, the Department indicated that the effective date of this rulemaking would be upon publication in the Pennsylvania Bulletin. However, in order to allow adequate time for insurance companies to develop the annuity disclosure statements required by this regulation, the Department has extended the effective date of this regulation to the first day of the month following 180 days after the publication of this final form regulation in the Pennsylvania Bulletin. Of course, the effective date of this regulation is also dependent upon approval of the final form regulation by the legislative standing committees, the Independent Regulatory Review Commission and the Office of the Attorney General.

(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)

11-01-2008

2265

DO NOT WRITE IN THIS SPACE

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

By _____
(Deputy Attorney General)

Date of Approval

→ Check if applicable
Copy not approved Objections
attached

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

Insurance Department

(AGENCY)

DOCUMENT/FISCAI NOTE NO 11-200

DATE OF ADOPTION _____

BY M. Diane Koken
M. Diane Koken
Insurance Commissioner

TITLE _____
(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

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

BY John V. Turner

DATE OF APPROVAL

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

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

NOTICE OF FINAL FORM RULEMAKING

INSURANCE DEPARTMENT

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

Annuity Disclosure

PREAMBLE

The Insurance Department (Department) hereby amends 31 Pa. Code, Chapter 83a, §§ 83a.1-83a.9, as set forth in Annex A.

Statutory Authority

The final form regulation is adopted pursuant to 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 final form rulemaking is promulgated 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.

Comments and Response

Notice of proposed rulemaking was published at 32 Pa.B. 1869 (April 13, 2002) with a 30-day comment period. During the 30-day comment period, joint comments were received from the Insurance Federation of Pennsylvania, Inc. and the American Council of Life Insurers (IFP/ACLI), and from the Independent Insurance Agents of Pennsylvania, the Pennsylvania Association of Insurance and Financial Advisors and the Pennsylvania Association of Health Underwriters (Agent Groups). Individual comments were received from the Travelers Insurance Company (Travelers) and Northwestern Mutual Life Insurance Company (Northwestern). In addition, during its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The following is a summary of those comments as well as the Department's response thereto.

General Comments

This final form regulation is based upon the National Association of Insurance Commissioners Annuity Disclosure Model Regulation (NAIC Model). Although the Department generally followed the NAIC Model, the Department believed that several important and necessary consumer protections were lacking and included several disclosure requirements that are not found in the model regulation. The following is a list of the sections where the Department has substantively deviated from the NAIC Model and comments were provided on those deviations:

- (1) § 83a.4(b)(2) (relating to the length of time that an insurer must post the disclosure on its website when an annuity is sold through an internet transaction).
- (2) § 83a.5(a)(1) (relating to the title of the disclosure form).
- (3) § 83a.5(a)(4)(iii) (relating to the disclosure of bonuses).

- (4) § 83a.5(a)(4)(v) (relating to the disclosure of annuitization values).
- (5) § 83a.5(a)(4)(vi) (relating to an explanation of the values upon surrender of the contract).
- (6) § 83a.5(b) (relating to information that must appear on the first page of the disclosure form).
- (7) § 83a.6 (relating to the use and non-modification of annuity disclosures).
- (8) § 83a.7 (relating to the Department's right to review disclosure statements).
- (9) § 83a.8 (relating to the disclosure of market value adjustments and total return adjustments and the design of reports for equity indexed annuities).

Several of the interested parties commented on these deviations from the NAIC Model and IRRC requested that the Department explain the compelling public interest that requires the departures from the NAIC Model listed above. The following is the Department's response to the comments relating to the regulation's departure from the NAIC Model as well as an explanation of the Department's reasons for such departures.

§ 83a.4(b)(2) (relating to the length of time that an insurer must post the disclosure on its website when an annuity is sold through an internet transaction)

Under this § 83a.4(b)(2), when an annuity is sold via the Internet, the disclosure statement required by this regulation must be "available for viewing, printing, saving or downloading to a file from the marketing website for at least 7 days after application. . . ." The NAIC model is silent to the minimum number of days during which the disclosure statement must be retained on the website. Rather, the NAIC Model only requires that "reasonable steps" be taken to make the disclosure available on the insurer's website. This 7-day requirement will allow consumers the opportunity to re-visit a website and download, save or print a particular disclosure statement for an annuity that they may have applied for in the last 7 days. IRRC has requested that the Department explain the public interest that is served by this deviation from the NAIC Model.

The Department included this additional language in order to provide guidance to insurers as to what length of time the Department considers to be reasonable. Rather than following the NAIC Model which only requires that "reasonable steps" be taken to make the disclosure statement available online, the Department has more clearly defined what it considers to be such "reasonable steps" by inserting a definite minimum time period that the disclosure must remain on an insurer's website. This clarification is a reasonable balance between consumer protection and administrative certainty for insurers. Consumers are guaranteed that the disclosure statement will remain available online for at least 7 days, while insurers are able to eliminate the disclosures from the website after 7 days. Without the clarification, insurers would arguably have to retain the disclosure on the website indefinitely, and at the very least, insurers can now be certain that elimination

of the disclosure from their website after 7 days will not constitute a violation of the regulation.

§ 83a.5(a)(1) (relating to the title of the disclosure form)

Although there is no similar requirement in the NAIC Model, § 83a.5(a)(1) requires that all disclosure statements must include the title “Annuity Disclosure Statement” in prominent type. IRRC has requested that the Department explain its reasons for including this departure from the NAIC Model.

The Department has included this requirement as an added consumer protection. The purpose of the requirement is to draw the consumer’s attention to the importance of the information contained in the disclosure. Without a requirement that a prominent title be included on the disclosure statement, it is possible that consumers might not understand the purpose of the statement or ignore the information completely. Clearly, there would be no additional costs associated with including a title on the disclosure statement. However, Northwestern commented that deviations from the NAIC Model such as this would result in substantial costs because Pennsylvania-specific forms would have to be created. However, it is important to note that the inclusion of such a title is not prohibited by the NAIC Model. Therefore, insurers would not have to create Pennsylvania-specific forms. Instead, their standard forms that are used in Pennsylvania as well as other states could be modified to include the title required by this final form rulemaking.

§ 83a.5(a)(4)(iii) (relating to disclosure of bonuses)

Although there is no similar requirement in the NAIC Model, § 83a.5(a)(4)(iii) requires that bonuses be clearly explained on the disclosure form. IFP/ACLI and Northwestern have recommended that this requirement be deleted because it is overly detailed in attempting to describe how the insurer must explain the relationship of the cost of a bonus to the pricing structure of the contract. IFP/ACLI and Northwestern question whether an explanation that satisfies the requirements of the regulation would be meaningful to the reader.

The Department does not agree that the required disclosure of the interaction of any bonus with policy values and terms constitutes a “fairly intricate” explanation that is beyond the intellectual grasp of most consumers. A statement such as “the interest credit will be 1% less than the rate that would be credited if the contract did not contain a bonus” is not a difficult concept for a contract owner to understand. In addition, the Department has been administratively requiring a disclosure statement for annuity contracts that include a bonus for some time without complaint from either consumers or insurers. It has been the experience of the Department that the disclosure statements filed for these annuities that include a bonus have been very clear, concise and extremely easy to understand.

Furthermore, it is important to note that the NAIC Model also requires disclosure of bonuses generally. Section 5(B)(3)(b) of the NAIC Model requires that the disclosure specify “any bonus or introductory portion,” and the Department has simply expanded on

this requirement. The Department has included the “additional” disclosure requirements relating to bonuses because the word “bonus” suggests that the benefit is some additional value that is provided with no charge, when, in fact, there are costs to the consumer that are associated with such “bonuses” in annuity contracts. The Department believes that it is essential that consumers be apprised that a “bonus” comes at a cost and be informed of how that cost is built into the annuity contract. This information is critical in order for a consumer to completely evaluate an annuity contract and make an informed decision.

Some interested parties commented that this additional disclosure would require insurers to develop Pennsylvania-specific forms. However, as with the requirement that the disclosure statement include a specified title in prominent type, the NAIC Model does not prohibit insurers from including the bonus information required by this regulation. In fact, as explained above, the NAIC Model explicitly requires that disclosure statements specify any bonuses, and the additional requirements in this final form regulation will not conflict with the requirements of the NAIC Model. Instead, insurers can develop standard forms that include the additional bonus cost disclosures required by this regulation and that standard form can be used in Pennsylvania and any other state that has adopted the NAIC Model. Thus, any argument that the additional language will result in burdensome administrative costs is without merit.

§ 83a.5(a)(4)(v) (relating to the disclosure of annuitization values)

IFP/ACLI suggested that the disclosure of “the values that are applied under contract settlement options provision to annuitize the contract” has no parallel in the NAIC Model and that insurers were unsure of the meaning of the term.

The Department has deviated from the NAIC Model by including a requirement that values that are applied under the contract settlement options provision to annuitize the contract be identified in the disclosure statement. The Department believes that consumer protection is augmented by this requirement because it is important that these values be separately identified, as these values may be different than the surrender values of the contract. However, although the Department considers this to be a necessary deviation from the NAIC Model in order to adequately protect the Commonwealth’s insurance consumers, the Department has determined from the comments that the proposed language is unclear and possibly confusing. Therefore, in order to clarify this final form rulemaking, the Department has changed the term “the values used to determine the annuity income payments” to “an identification of the values that are applied under the contract settlement options provisions to annuitize the contract.”

§ 83a.5(a)(4)(vi) (relating to an explanation of the values upon surrender of the contract)

IFP/ACLI suggested that in § 83a.5(a)(4)(vi), the term, surrender and annuitization value differences, seems to be disclosed under the requirements of (4)(iv) as a “value reduction” on surrender. This paragraph is not in the model, which shows that this important point was covered

by this other paragraph. Moreover, this paragraph literally could call for a discussion of the annuity nonforfeiture rate, a technical point that cannot be adequately or clearly covered in a simple, direct document. Again, the calculation of values upon surrender and upon annuitization are features of the contracts themselves. Those features do not vary substantially among writers and attempting to go into great detail only confuses the sales prospect and does not enable him to comparison shop on any meaningful basis. IFP/ACLI suggested this paragraph be dropped.

The Department has reviewed the NAIC Model and based upon the comment submitted by IFP/ACLI, determined that this final form rulemaking does not require the additional language the Department included in § 83a.5(a)(4)(vi). The purpose of this phrase was to provide an explanation of any differences between the surrender value and the values used to determine income payments. Upon reconsideration, the other disclosures required by § 83a.5(a)(4) provide an adequate explanation of the differences and therefore the Department is deleting § 83a.5(a)(4)(vi) in the final form regulation.

§ 83a.5(b) (relating to information that must appear on the first page of the disclosure form)

The Department has departed from the NAIC Model in that this final form rulemaking requires that certain information appear on the first page of the disclosure form, including interest rates bonuses, fees, surrender charges. IFP/ACLI found this requirement troublesome because some insurers have already prepared disclosure booklets in pamphlet form for use with each of their products and they believe that they will be unable to include all these first page requirements on the first page. Also IFP/ACLI and Northwestern commented that this provision will require insurers to develop Pennsylvania-specific forms. The IRRC also questioned the reasonableness and economic impact of this first page declaration requirement and requested that the Department explain this departure from the NAIC Model.

The Department believes that the first page is most likely to be read by consumers, so the Department has reasoned that the first page of the disclosure statement should contain the most significant elements of the annuity contract. The Department has included this additional requirement beyond the NAIC Model in the interest of consumer protection and to ensure that consumers are able to easily locate the most important features and elements of an annuity contract that they seek to purchase. In addition, “first page disclosures” are not uncommon in the insurance industry. For example, disclosure of a required “free look” period must appear on the first page of all individual fixed dollar life insurance contracts and all fixed annuity contracts. See 40 P.S. §§ 510c, 510d respectively.

In response to the comments that some insurers have already developed disclosure forms that conform to the NAIC Model, it is important to note that, to date, only 5 states have implemented the NAIC Model, and it is not uncommon for states to make certain modifications to a NAIC Model in order to conform the model regulation to existing state statutes and regulations, as well as to address other concerns that are not included in the model regulation. Thus, because so few states have enacted the NAIC Model, insurers that hope to develop standard forms for use in all such states are highly likely to be continually

faced with costs relating to the modification of their disclosure statement forms. Furthermore, the Department believes that the consumer protection benefits of this additional requirement outweigh any costs associated with insurers modifying their disclosure statement forms. Finally, the NAIC Model does not require that the information in the disclosure be presented in any particular order or location, so any standard forms that comply with the “first page requirements” of this regulation would also satisfy the requirements of the NAIC Model.

Although the Department has maintained the requirement that certain disclosures appear on the first page of the statement, § 83a.5(b)(6) has been amended in order to clarify that it is the values used to annuitize the contract that must appear on the first page of the disclosure statement.

§ 83a.6 (relating to the use and non-modification of annuity disclosures)

Under § 83a.6, a producer may only use, and may not withhold, alter, change, or in any way modify the annuity disclosures provided by an insurer. There is no similar provision in the NAIC Model, and the Agent Groups questioned the propriety of this departure from the NAIC Model.

The Department’s intent in including this additional provision is clear; namely that insurance producers are prohibited from creating their own annuity disclosure system that purports to represent the annuity when, in fact, the insurer has not authorized the producer to use such disclosures. This additional section that is not found in the NAIC Model, however, 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 final form regulation or any other law or regulation currently in effect. The crux of the requirement is that a producer may not substitute a different disclosure statement for the one created and authorized by the insurer or alter such disclosure statements. A producer, however, is not prohibited by this final form rulemaking from providing additional materials or disclosures that are not violative of this regulation or any other statute or regulation.

§ 83a.7 (relating to the Department’s right to review disclosure statements)

Pursuant to § 83a.7, the Department has the right to request and review a completed disclosure statement. There is no similar section in the NAIC Model. IRRC questioned the reasonableness and clarity of this section and commented that the regulation does not specify under what circumstances the Department would request the disclosure statements. Consequently, IRRC has requested that Department provide examples of when it will require submission of completed disclosure statements. With regard to the Department’s use of the term “completed” in this section, IRRC noted that the term is vague, and IFP/ACLI commented that the term carries the connotation of an individualized disclosure statement.

With regard to IRRC's question regarding when the Department would request and review an insurer's completed disclosure statement, examples include requests made in the context of a market conduct examination or an investigation based upon a consumer complaint. In addition, the Commissioner may request the disclosure statements at her discretion for the purpose of determining compliance with this chapter. The Department has included this provision, which is not found in the NAIC Model, to make clear that the Department may request a completed disclosure statement in the performance of its regulatory duties and responsibilities.

With regard to the second issue raised by IRRC and IFP/ACLI, there appears to be some misunderstanding relating to the Department's use of the term "completed" in this final form regulation. The term "completed" does not mean that the disclosure statement must be individualized or tailored to document the specific transaction with a particular consumer. Instead, "completed" simply means that all of the requirements of this final form regulation have been satisfied. For example, the regulation requires that the disclosure statement include the name and home office address of the insurer as well as the insurer's address to which correspondence should be addressed. Some insurers that do business nationally might have several regional consumer service offices and in order to be "completed" the Department would expect that the address of the appropriate consumer service office is included on the disclosure statement if correspondence is to be addressed to the consumer service office. Also, the term "completed" means that all pages of the document are present. Furthermore, this rulemaking does not require that the disclosure statement include the specific amount of money provided by the consumer for the purchase of the annuity or other information that is specific to that transaction with the consumer. Instead, the Department would expect that the consumer be provided a disclosure statement that is appropriate for the type of annuity contract that is being purchased by the consumer.

§ 83a.8 (relating to the disclosure of market value adjustments and total return adjustments and the design of reports for equity indexed annuities)

§ 83a.8 requires that an annual report be provided in two situations: (1) to the contract owner of a deferred annuity during the annuity's accumulation period; and (2) to the contract owner of a deferred or immediate annuity during the payout period when changes occur in the nonguaranteed elements of the annuity contract. Although the Department believes that these "triggers" for the annual report requirement are substantively the same as those in the NAIC Model, Northwestern has commented that the triggers are actually different. § 83a.8 also identifies what information must be included in the annual report, and the Department has included an additional requirement not found in the NAIC Model that information relating to market value adjustment and total return adjustment features be included in the annual report. Also, the Department has departed from the NAIC Model by requiring different content requirements for annual reports that insurers are to provide to equity indexed annuity contract holders. Northwestern commented that these changes to the requirements for the content of the

annual report impairs the NAIC Model's goal of uniformity and will result in significant costs to multi-state insurers for compliance in Pennsylvania.

With regard to Northwestern's comment that the triggers for the annual report requirements in this final form regulation differ from those in the NAIC Model, it was not the Department's intention to deviate from the NAIC Model in this regard. Therefore, in order to clarify the Department's intent, the prefatory language found § 83a.8 has been modified to clarify that a report is required during the pay out period only if changes occur to any nonguaranteed elements during the report period.

The NAIC Model is silent on market value adjustment and total return adjustment features, which are found in certain annuity contracts. Since the market value or total return adjustment will change as the value of the underlying assets changes, the Department believes it is necessary to disclose in the report that the reported cash surrender values include a market value or total return adjustment. In reviewing Northwestern's comment on Section 83a.8, it became apparent that § 83a.8(1)(iv) requires wording clarification. Therefore the Department has changed the wording in § 83a.8(1)(iv) to read as follows (changed wording is emphasized): "For an annuity which provides for an adjustment in the cash surrender values based on changes in the market value or total return of the assets underlying the contract, a statement during the adjustment period that the cash surrender value includes a reduction for [the] any surrender charge and for either a market value adjustment or a total return adjustment."

The NAIC Model's report requirements are unclear as to how they apply to an equity-indexed annuity contract and are incomplete as to the report disclosures for an equity-indexed annuity. Therefore, the Department has augmented and clarified the requirements of the NAIC Model in this final form regulation by including report requirements that specifically apply to an equity-indexed annuity. The purpose of the disclosure, which is to provide information concerning credits, charges and values, closely tracks the requirements of the NAIC Model for non-equity indexed annuities.

Section-specific Comments:

The following is a summary of comments that relate to specific sections of the final form regulation and do not constitute substantive deviations from the NAIC Model, which deviations have been explained above. Included in the summary of comments is the Department's response thereto.

Section 83a.4 (relating to disclosure statement delivery)

In situations involving annuity solicitations that occur through other than face-to-face contact, § 83a.4(b) of the regulation requires that an annuity disclosure statement be delivered to the applicant "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." IRRC commented that the purpose of the disclosure statement is to ensure that the applicant understands certain basic features of the terms of the annuity contract, so it would appear to be counterproductive to provide the disclosure statement after the fact. IRRC requested that the Department explain why the disclosure statement should be delivered after receipt of a completed application or at the time of contract delivery.

As in the NAIC Model, the purpose of § 83a.4(b) is to establish requirements when annuities are sold through other than face-to-face contact with an insurer or a producer. These alternative methods would include solicitations by mail, the Internet or telephone, and because of the solicitation method, it is impossible to immediately provide a written disclosure statement at the time of application. Therefore, in order to foster and permit the sale and solicitation of annuities through electronic means, § 83a.4(b) provides that the annuity applicant must be provided the disclosure statement within 5 days of application. However, even though the disclosure is provided after the application has been completed, all annuity contracts are required by statute (40 P.S. § 510d) to have a "free look" period for at least 10 days after the consumer received the annuity contract wherein the insurer must provide a full refund to the consumer if the consumer wishes to rescind the contract.

Travelers stated that the NAIC Model Annuity and Deposit Fund Disclosure Regulation provides that the prescribed disclosure document must be provided to prospective purchases prior to accepting premium payments, unless the annuity contract or disclosure document provides for an unconditional refund period of at least ten days. Under these circumstances, the disclosure document may be delivered to the customer with the delivery of the annuity contract. Travelers believed that this approach will better assure the goal of the proposed rulemaking for consumer understanding of the nature of the product purchased.

The Department could not locate where the NAIC Model on which this regulation is based allows delayed delivery of the disclosure document if an unconditional refund period of at least ten days is allowed. The Department's final form regulation is consistent with the delivery requirements of the NAIC Model. Both the NAIC Model and this rulemaking recognize that it is valuable for the purchaser of an annuity contract to have the disclosure as soon as possible prior to the delivery of the contract. The NAIC Model Deposit Fund Disclosure Regulation mentioned by Travelers is an older model regulation, and the more recently adopted NAIC Model better suits the annuity products that are more commonly sold by insurers in today's market. In addition, the Department believes that the Commonwealth's consumers are best served by adopting the delivery requirements of the NAIC Model rather than the alternative approach suggested by Travelers.

Section 83a.9 (relating to penalties)

IRRC noted that this section included penalties for failing to make the required disclosure pertaining to an annuity product sold in the Commonwealth. IRRC and the Agent Groups

asserted that this section should include a hold harmless clause for the producer of the annuity to limit their liability when the producer uses the disclosure statement supplied by the insurer. IRRC has requested that the Preamble to the final-form regulation should include an explanation as to why the Department believes that a hold harmless clause is unnecessary or unwarranted.

The Department does not believe it is in the best interest of the consumer to include a hold harmless provision in the regulation. If a producer is using the proper disclosure statement developed by an insurer, and the disclosure statement is current, then the producer will not be subject to sanctions identified in this section. However, if a producer is knowingly using outdated disclosure statements or is not providing the proper disclosure statement for the particular annuity contract that is being sold, then such activities constitute a valid violation of the regulation and the Department should not limit their ability to pursue an action against that producer in order to enforce this final form regulation. For this reason, a hold harmless provision is not in the consumer's best interest and has not been included in the final form regulation.

IRRC noted that this subsection (d) of § 83a.9 includes a citation to the entire Unfair Insurance Practices Act (UIPA). For clarity, IRRC has recommended that the Department should specify which sections of the UIPA would be violated if a failure to make the required disclosures occurs. With regard to this same subsection, IFP/ACLI objected to the wording and recommended that the clause "if committed or performed with such frequency to indicate a business practice" be incorporated in the text.

With regard to the IRRC's comment, the Department has no objection and has added the appropriate citation to the UIPA. With regard to the recommendation made by IFP/ACLI, the Department has not incorporated the suggested language. The Department does not believe that it is appropriate to include the additional clause because the language suggested by IFP/ACLI is taken from Section 5(a)(10) of the UIPA (40 P.S. § 1171.5(a)(10)), which pertains generally only to claims practice violations. Therefore, the Department has not included the suggested wording.

The IRRC noted that under this subsection (e) of § 83a.9, "the insurer shall bear the burden in any investigation, hearing or determination by the Department . . . to prove that a properly completed disclosure was provided to the annuity applicant." The IRRC has requested that the Department explain its reasons for shifting the burden of proof to the insurer. In addition, IFP/ACLI disagrees with the inclusion of this provision and has recommended that it be deleted from the regulation.

The Department's original intent was not to shift any burdens of proof in an administrative hearing. Rather, the intent of this section was merely to clarify that because the Department does not require that the disclosure statements required by this chapter be filed with the Department, the insurer is the only party in an administrative hearing that can adequately prove that a completed disclosure statement was actually provided to the annuity applicant. The Department would have the burden of proof in a "prosecution"

under this chapter, and the insurer would have the burden of proof in presenting its defense that a properly completed disclosure statement was provided to the annuity applicant. As such, this provision merely restated the standard burdens of proof, and the Department therefore agrees with the IRRC and IFP and has eliminated the provision altogether.

Affected Parties

The rulemaking applies to insurance companies and producers, doing the business of annuity sales and marketing in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department due to the adoption of the Chapter 83a.

General Public

There will be no fiscal impact to the public.

Political Subdivisions

The rulemaking will not impose additional costs on political subdivisions.

Private Sector

The rulemaking may impose additional costs to insurance companies and producers doing the business of insurance by selling and marketing annuities in the Commonwealth. There will be a cost associated with producing the annuity disclosure statement and maintaining completed annuity disclosure statements. The cost should be minimal as insurers and agents currently maintain other types of policy information, and any such minimal costs are substantially outweighed by consumer protection that is provided by this regulation.

Paperwork

The adoption of the rulemaking will require additional paperwork for the insurance industry and producers. The insurance industry and possibly the producers will be required to keep proof of disclosure for the term of the policy and 5 years. This is based on the Department's requirements for record retention.

Effectiveness/Sunset Date

In its proposed regulation, the Department indicated that the effective date of this rulemaking would be upon publication in the Pennsylvania Bulletin. However, in order to allow adequate time for insurance companies to develop the annuity disclosure statements required by this regulation, the Department has extended the effective date of this regulation to the first day of the month following 180 days after the publication of this final form regulation 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 may 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)), the agency submitted a copy of this regulation on August 29, 2002 to the Independent Regulatory Review Commission and to the Chairmen of the House Insurance Committee and the Senate Banking and 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.

On September 5, 2002, the Department withdrew the regulation and simultaneously re-submitted the regulation for consideration by the IRRC and the Legislative Standing Committees.

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 House and Senate Committees on _____. 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 §§ 83a.1-83a.9, 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 regulation adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. Diane Koken
Insurance Commissioner

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 nonmodification 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 to:

(1) Provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education.

(2) Specify the minimum information which must be disclosed and the method for disclosing the information in connection with the sale of annuity contracts.

(3) 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 nonregistered variable annuities, or other registered products subject to the prospectus delivery requirements of the Securities Act of 1933 (15 U.S.C.A. §§ 77a--77aa).

(3) Immediate annuities that do not contain any nonguaranteed 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.A. §§ 1001--1461).

(ii) A plan described by section 401(a), 401(k) or 403(b) of the Internal Revenue Code (26 U.S.C.A. §§ 401(a), 401(k) and 403(b)), when 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.A. § 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.A. § 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 pretax or after-tax basis, and when the insurer has been notified that plan participants may choose from among two 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, 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--Any 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, noninterest 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--1142-701).

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.

Nonguaranteed elements--The premiums, crediting interest rates, benefits, values, bonuses, persistency credits, noninterest 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 nonguaranteed if any of the underlying elements that are used in its calculation are nonguaranteed.

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 Internal Revenue Code (26 U.S.C.A. § 130(d)) or an annuity that would be a qualified funding asset under section 130(d) of the Internal Revenue Code 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 when appropriate. The examples may be based on assumed premiums. The description shall include:

(i) The guaranteed, nonguaranteed 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.~~ AN IDENTIFICATION OF THE VALUES THAT ARE APPLIED UNDER THE CONTRACT SETTLEMENT OPTIONS PROVISION TO ANNUITIZE THE CONTRACT.

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

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

~~(viii) (VII) Periodic income options with an explanation of the guaranteed and nonguaranteed basis.~~

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

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

~~(xi) (X) 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 subsection (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~~ AN IDENTIFICATION OF THE VALUES THAT ARE APPLIED

UNDER THE CONTRACT SETTLEMENT OPTIONS PROVISION TO ANNUITIZE THE CONTRACT.

(c) *Nonguaranteed 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 nonmodification 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 another person as the insurer may designate for that purpose.

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

The Department 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 WHEN CHANGES OCCUR IN THE nonguaranteed elements during the payout period. The report shall be provided without charge.

(1) The report for a nonequity 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 OR TOTAL RETURN of the assets underlying the contract, a statement DURING THE ADJUSTMENT PERIOD that the cash surrender value includes a reduction for the ANY 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 and 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 violating this chapter may be considered a violation of SECTIONS 9, 10 AND 11 OF the Unfair Insurance Practices Act (40 P. S. §§ 1171.1–1171.15 §§ 1171.9-1171.11).

~~(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.~~

The Final Form Regulation listed below has been sent to the following:

| <i>Reg #</i> | <i>Regulation Title</i> | <i>Date Sent</i> | <i>08/29/2002</i> |
|---|---------------------------|-------------------------|--|
| <i>11-200</i> | <i>Annuity Disclosure</i> | | |
| <hr/> | | | |
| <i>Mr. Vince Phillips</i> | | | |
| <i>Contract Lobbyist</i> | | | |
| <i>Independent Insurance Agents of Pennsylvania</i> | | | |
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| <hr/> | | | |
| <i>Mr. John Doubman</i> | | | |
| <i>Secretary and Counsel</i> | | | |
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| <i>Ms. Doreen H. Talone</i> | | | |
| <i>Manager, State Filing and Compliance</i> | | | |
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**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

- Proposed Regulation
- X 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
 SEP 5 2002
 PM 5:28
 DEPARTMENT OF INSURANCE

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|--------|----------------------|--|
| 9/5/02 | <u>M.E. Netchel</u> | HOUSE COMMITTEE ON INSURANCE |
| 4/5/02 | <u>Spils Carhart</u> | |
| 7/5/02 | <u>James P. ...</u> | SENATE COMMITTEE ON BANKING & INSURANCE |
| 9/5/02 | <u>J. McDaniel</u> | |
| 9/5/02 | <u>E. Pagan</u> | INDEPENDENT REGULATORY REVIEW COMMISSION |
| _____ | _____ | ATTORNEY GENERAL |
| _____ | _____ | LEGISLATIVE REFERENCE BUREAU |

September 5, 2002