

September 13, 2002

SENT VIA EMAIL
Mr. Peter J. Salvatore
Regulatory Coordinator
Pennsylvania Insurance Department

2002 SEP 20 10:12

Dear Mr. Salvatore,

Thank you for emailing to me at The Northwestern Mutual Life Insurance Company the final form of the annuity disclosure regulation which Pennsylvania proposes to adopt. A separate email from Chris Markham in your Office indicated we had until September 19 to submit further comment. We appreciate your consideration of these emailed comments. We also appreciate the clarification made to Section 83a.8 in response to our prior comments.

It is not my intent to restate every point contained in my email to you of May 10, 2002. Since the proposed text of the regulation is changed in relatively few ways, for the most part our prior comments still stand as our position. I do want to comment on certain statements made in the Preamble to the proposal.

The Preamble seems to downplay that this proposal differs from the carefully considered and debated NAIC Annuity Disclosure Model Regulation in fundamental ways. This regulation represents not just a rejection of the NAIC Model but in a larger sense a rejection of the uniformity and regulatory clarity embraced by the NAIC and its leadership in recent years.

The Preamble states that an annuity issuer complying with the significant changes Pennsylvania makes to the Model might also thereby still comply with the Model because the Model does "not prohibit" these additional requirements. Even if that is true (the changes and differences are considerable and there may be inconsistencies which cannot be reconciled), that does not address the issue behind our opposition. Once the work is done to comply with the Model, the intent of the NAIC is and was that no further work would be needed as states adopt the Model -- that each state adoption would not call for insurers to reinvent the wheel. Pennsylvania's proposal calls for just such further work, just such further expense, and for state-boundary based differences in compliance and programming resources.

These sorts of state-boundary based distinctions are what the NAIC has vowed to reform and move away from.

What is to happen when another state imposes obligations beyond what Pennsylvania has done? If every other state decided, as Pennsylvania has, to "improve" on the Model in its own way then, with each state's version, the prior and existing work would have to be redone. Eventually the programming and compliance work might have to be done over as many as 51 times, or in the alternative we could be left with as many as 51 different and inconsistent sets of programming and compliance to be maintained. That is where rejection of Model language tends to lead.

The essence of our opposition is that Disclosure Statements and Reports to Contract Holders which comply with the Model will not comply with the Pennsylvania regulation. Just to repeat a specific example and comment, chosen because it could mandate major expenses while achieving little, if anything, for consumers, the "first page" mandate of Section 83a.5(b) rules out there being a simple cover page. The statements in the Preamble that other regulations require things to be on the first page, that consumers might read only the cover page and not open up the document, and that it is easy for the industry to scrap any cover page programming already done, are not responsive to the genuine issues of costs versus benefits involved when Model language is rejected.

The fact remains that a cover page is not inconsistent with the NAIC Model but is inconsistent with the Pennsylvania regulation; that consumers readily understand that a cover page is the cover to something, not the entire document, and indeed a cover page signals and highlights that something rather important is contained within. The result is that an effective disclosure document that fully complies with the NAIC Model cannot per se be used in Pennsylvania, regardless of actual content and indeed even if it contained all the Pennsylvania content.

That point is raised strictly by way of example. More serious differences are introduced into both the disclosure document and the annual report. These points and differences deserve more extended debate and discussion than they have received or can receive in the context of any individual state's proposed regulation. The place for such extended discussion is at the NAIC committee level, from which the NAIC Model came forth.

These are all points made in our previous comment email and in other comments the Department has received or will receive.

One final comment about the Preamble, as it reacts to a comment made by another insurance carrier. The NAIC Model tracks the NAIC Life Insurance Disclosure Regulation in this way: the disclosures and/or Buyer's Guide are to be at time of application but if they are not, then the contract or policy must have a "free look" of sufficient length. In the NAIC Model it is 15 days. This means there is alternative compliance: time of application as the general rule, a later time (usually upon delivery) if there is the extended free look.

The Department's Preamble said that 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." It is in the Model, Sec. 5(A)(3), albeit the Model recites a 15 day free look, longer than normal presumably to reflect the fact that when the disclosures and documents are given at delivery the contract owner may need some extra time to digest them. The comparable provision in the NAIC Life Insurance Disclosure Model Regulation is Section 5(A)(1). We are aware of no discussion suggesting that the NAIC intended the annuity and life insurance regulations to differ on this issue of alternative ways to comply.

We strongly urge the Department to reconsider this proposed regulation and to adopt a version conforming to the NAIC Model so that compliance with the Model will also constitute compliance in Pennsylvania. It would be an unfortunate development in state regulation of insurance if a major state such as Pennsylvania rejected such a recent NAIC Model regulation.

Thank you for your consideration of these views. We would be pleased to try to respond to any questions the Department may have.

Sincerely yours,

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