September 13, 2002

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

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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John R. Doubman
Secretary & Counsel

September 13, 2002

Honorable Diane Koken
Insurance Commissioner
Commonwealth of Pennsylvania
1326 Strawberry Square
Harrisburg, PA 17120

Re: Annuity Disclosure Regulation: 31 Pa. Code Chapter 83a, Fiscal Note 11-200

Dear Commissioner Koken:

Despite considerable improvements which have been negotiated in the captioned final form regulation, the Insurance Federation and American Council of Life Insurers will be unable to support it before the Independent Regulatory Review Commission unless further changes moving it toward the NAIC model regulation are made. These are all topics of previous discussion. To our sincere regret, however, the Federation misjudged the strength of our members' insistence that any regulation must not promote the creation by individual states of non uniform provisions or contain special provisions which will necessitate the creation of Pennsylvania specific disclosure materials.

In any event, the six topics which require either a deletion or a clarification in the final form regulation are:

1. **Mandatory First Page Contents**: Section 83a.5.(b) has no parallel in the NAIC model and mandates the contents of a first (conceivably, a cover) page. We recommend deletion of this subsection as the drafters of the model carefully considered what type of disclosure would be most meaningful to consumers and saw no need, in what was intended to be a

short, clear generic explanation anyway, to dictate the contents of any specific page.

2. **Mandatory Cost of Bonus Disclosure**: Section 83a.5.(a)(4)(iii) also is without a counterpart in the model and mandates that the disclosure go beyond "specifying any bonus" to specify what the tradeoffs in the contact may be which allow the insurer to offer it. A reference to any bonus like the one in the NAIC Model should be added back to (ii) and this subsection should be deleted.

3. **Cash and Annuitization Values Disclosure**: Section 83a.5.(a)(4)(v), while improved, still implies that the insurer specify the actual annuitization value. We have suggested that this provision be dropped, but it could, as ACLI suggests, simply be changed to reveal that the values used under the settlement options provisions to annuitize the contract may be different from the surrender values.

4. **Reports for Equity Indexed Annuities**: Section 83a.8.(2) sets up a specially prepared report for equity indexed annuities. The NAIC contemplated and rejected such a report because it adds little meaningful information for the consumer and is explained in a Special Appendix which the NAIC required be added to the Buyer's Guide. Basically, this subsection should be dropped and the whole Section 83a.8. be rewritten to track Section 6 of the NAIC model.

5. **Right of Review**: Section 83a.7. notes that the Department may request submission of a "completed" disclosure statement. The Department's continuing right to see sales materials is unquestioned and probably does not need to be restated here. In any event, at the least the word "completed" should be deleted so that there is no confusion about any need to make changes in what should be a preprinted form given to the consumer.

6. **Deferred Annuities with no Non-guaranteed Elements:** Section 83a.2.(3) departs from the model in failing to exclude deferred annuities which do not contain any nonguaranteed elements. Frankly, no one can think of such

a product, but that being the case there is no need to vary from the NAIC model. Our companies would be more comfortable if "and deferred" were added to this subsection following "Immediate."

We appreciate the work your staff has done on the regulation and the important public policy considerations raised. The fact is, however, that with products marketed nationally, like annuity and life insurance, the NAIC's attempt to create model standards and the states' willingness to adopt those standards is critical to insurers' ability to compete against other financial service entities. The national standards offered in the NAIC model are diluted if individual states exceed those standards.

The Federation and the ACLI understand the Department's argument that Pennsylvania's specific language exceeding the model's mandates can become the national standard. However, our members fear that Pennsylvania's new standards may not be those that jurisdictions like Texas, Florida, New York and California accept as their own. When each state takes its own bite at the apple, uniformity is lost and our carriers' ability to compete in bringing products to market expeditiously is jeopardized.

Thank you for attention to our concerns. We look forward to meeting with you to resolve them.

Sincerely,

John Doubman

cc: Brad Harker, Esq.
Peter Salvatore
Sally Brown
Michael Bartholomew