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John R. Doubman
Secretary & Counsel

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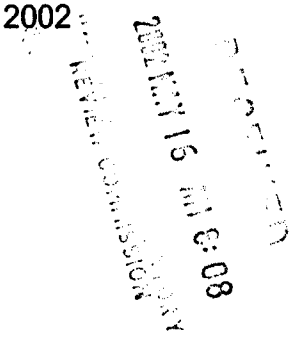

Peter J. Salvatore,
Regulatory Coordinator
Special Projects Office
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

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

Dear Mr. Salvatore:

The Insurance Federation of Pennsylvania (the "Federation") and the American Council of Life Insurers ("ACLI") are pleased to comment on the proposed regulation governing annuity sales disclosure which the Insurance Department (the "Department") published in the April 12, 2002, Pennsylvania Bulletin.

After extensive discussions with the Federation, the ACLI and others interested in the regulation, the Department made significant changes to mold the regulation in the direction of the NAIC model on which it is based. That model's underlying purpose was to provide a short, understandable product by product generic disclosure. We sincerely appreciate the Department's accommodations in this regard.

By way of background, however, it should be noted that very few (four or five at most) states have chosen to promulgate annuity disclosure regulations. It is not germane to speculate why here. However, in the interim, there has developed among the NAIC members an emphasis on making state by state requirements more consistent. Second, there has been an attempt to keep rules for insurance products which are broadly sold in the financial marketplace by institutions like banks simple and straightforward. The purpose of this latter emphasis is to see that the state by

state requirements for insurers do not disadvantage these products against competing financial ones.

If Pennsylvania wants to promulgate a regulation in this area, it should be as consistent with the NAIC model as possible so that as other states create regulations, a 50 state regulatory maze does not result. The NAIC model regulation took over two years of effort from regulators, industry and consumer groups. While there is no need to comply slavishly with every word, the purpose underlying the model must not be undercut by a regulation which requires significantly different disclosures and sales practices.

Consequently, the comments below focus on the remaining parts of the regulation which either seem to carry over (perhaps inadvertently) the emphasis in earlier drafts on a personalized disclosure statement or which appear to require a disclosure statement which will substantially depart from the type of disclosure envisioned by the model.

The Federation and ACLI would be very pleased to continue to assist in any way possible toward the preparation of a final form which hopefully will embrace the additional provisions and corrections noted below.

1. Disclosure Statement Requirements - Section 83a.5.

We recommend the deletion of several of the listed elements of disclosure which are not in the model regulation and which would cause confusion if promulgated as proposed. They are:

a. (a)(4)(iii) bonus cost

The NAIC model calls for specifying a bonus or introductory portion as part of a description of the initial crediting rate. This paragraph, however, goes into great detail in attempting to describe how the insurer must explain the relationship of the cost of a bonus to the pricing structure of the contract. Without a potential buyer having an accounting degree, it is questionable whether any explanation under this formulation will be meaningful to the reader.

For one thing, it does little good to go into an explanation of how the contract is actuarially structured since it will not result in any meaningful ability to comparison shop even if the sales prospect understands it. We suggest adding a simple bonus disclosure requirement back into paragraph (4)(ii) consistent with the model and which the reader may actually understand.

b. (a)(4)(v) payment determinative values

This is a paragraph that has no parallel in the model and our member companies, many of them expert in this area, have little idea what it means. The reference may be to the account values at the time the contract is annuitized or it could refer to the methodology of the insurer in structuring the payments and their underlying economic assumptions. In any event, all of these features are provisions of the annuity contract itself.

The goals of simplicity and understandability argue for deletion of this item. It is extremely complex to go into this in the detail required so as to avoid liability for a general explanation which can be construed as at variance with the literal provisions of the contract. Moreover, the NAIC drafters concluded that it was not a vital or helpful disclosure. We suggest it be deleted.

c. (a)(4)(vi) surrender and annuitization value differences

Any difference in surrender and annuitization values 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. We suggest this paragraph be dropped.

2. First Page Declarations - Section 83a.5.(b)

Member companies continue to object to this provision as one of the most troublesome, and not merely because it is absent from the model. The problem is that some life insurers have prepared disclosure booklets in pamphlet form for use with each of their products. Following the NAIC's lead, some combine a disclosure statement and buyer's guide. There is simply no easy way to include all these first page requirements on the first page. This leaves companies with having to create paperwork for Pennsylvania specially, with either an endorsed paste-on page or perhaps a new booklet. If all the states do this, there will be no uniformity at all.

This was not the intent of the model drafters. The idea was to create an understandable, readable generic disclosure piece with all items to be disclosed considered to be important. The chances are that most companies will feature these essential element disclosures early in the material anyway if they want to produce a viable sales tool. There is no reason for the Department to mandate the order of presentation. We recommend that this subsection be deleted.

3. Disclosure Statement Review - Section 83a.7.

During previous discussions while the Department and Federation were resolving the issue of whether the Department really intended to require individually tailored disclosures, the term "completed" used in the regulation was a focus of misunderstanding. Since the term carries the connotation of an individualized disclosure statement, the Department removed it from the vast majority of the regulation. However, it remains here in the section allowing the Department to request to see a disclosure statement from any writer (as well as in the newly created "Penalties" subsection).

We suggest that it be deleted.

4. Penalties/Burden of Proof - Section 83a.9.

a. (d) - Penalties

The Federation previously objected to the wording of subsection (d) which appears to subject an insurer to Unfair Insurance Practice Act penalties for making a single violation of the regulation. It is still our recommendation that the clause "if committed or performed with such frequency to indicate a business practice" be incorporated in the text. The Department has declined to do so. Of course, it can be argued that this is harmless because the Department has no jurisdiction to expand the UIPA through regulation. The Federation believes it would be better practice to clarify this from the outset.

b. (e) - Burden of proof

The Department has added this subsection purporting to impose on an insurer the burden of proving in any Department proceeding that a "properly completed" disclosure was given. First, the subsection again uses the objectionable term "completed." At the very least, this word should be removed for the reasons stated in item 3 above.

More importantly, the Federation urges that the whole new subsection be deleted. Proceedings at the Insurance Department proceed under standard administrative rules and the Department should not be attempting to promulgate new standards of proof with respect to annuity disclosure.

The Department has removed previously proposed provisions requiring signed receipts for disclosure statements consistent with the intent to simplify and standardize the sales process. This appears to be a back door attempt to reimpose this same requirement on insurers. The Federation has pointed out previously that even requiring receipts is not going to prevent a purchaser from denying receipt or from claiming that notwithstanding receipt, the sales personnel contradicted the material or he or she did not understand it or understood it a different way.

For all these reasons, this subsection should be deleted.

One of the major reasons the NAIC chose to develop a model featuring a short, generic disclosure document was its belief that a more detailed, individualized document would be too daunting for most applicants to read or understand.

We believe our comments and suggestions are in keeping with the philosophy of the drafters of the NAIC model. Thank you very much for considering them.

Very truly yours,

John R. Doubman

c: Edwin G. Holl, Chairman of the Senate Banking and Insurance Committee

Honorable Nicholas A. Micozzie, Chairman of the House Insurance Committee

Mary Lou Harris
Independent Regulatory Review Commission