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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 13, 2002

Honorable M. Diane Koken, Commissioner
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: Regulation #11-200 (IRRC #2265)
Insurance Department
Life Insurance; Annuity Disclosure

Dear Commissioner Koken:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Nicholas A. Micozzie, Majority Chairman, House Insurance Committee
Honorable Anthony DeLuca, Democratic Chairman, House Insurance Committee
Honorable Edwin G. Holl, Chairman, Senate Banking and Insurance Committee
Honorable Jack Wagner, Minority Chairman, Senate Banking and Insurance Committee

Comments of the Independent Regulatory Review Commission

on

Insurance Department Regulation No. 11-200

Life Insurance; Annuity Disclosure

June 13, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Insurance Department must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. General. – Reasonableness; Clarity.

Consistency with model regulation

The proposed regulation varies from the National Association of Insurance Commissioners Annuity Disclosure Model Regulation (NAIC model) in certain areas. Particularly, Section 83a.5 (relating to disclosure statement) and Section 83a.8 (relating to report to contract owners) impose additional, substantive requirements not included in the NAIC model. The Department should explain the compelling public interest which requires departure from the NAIC model.

2. Section 83a.4. Disclosure statement delivery. – Reasonableness; Need; Clarity.

Subsection (b) – Other than face-to-face solicitation

This subsection requires an annuity disclosure statement to 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.” Given that the purpose of the disclosure statement is to ensure that the applicant understands certain basic features of the terms of the annuity contract, it would appear to be counterproductive to provide the disclosure statement after the fact. We request the Department explain why the disclosure statement should be delivered after receipt of a completed application or at the time of contract delivery.

Subsection (b)(2)

Under this subsection, for an online application via the Internet, the disclosure statement shall be “available for viewing, printing, saving or downloading to a file from the marketing website for at least 7 days after application....” The comparable requirement in the NAIC model (Section 5A(2)(b)(ii)) does not contain the seven-day requirement. It simply states that “taking reasonable steps to make the disclosure document available...on the insurer’s website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.”

Subsection (b) of the proposed regulation contains the five-day requirement consistent with the NAIC model. Why is it necessary to impose a seven-day requirement in Subsection (b)(2)?

3. Section 83a.5. Disclosure statement. – Reasonableness; Economic impact.

Subsection (b) – First page declarations

Subsection (b) lists several pieces of required information to be included on the first page of the disclosure statement. Several commentators assert this requirement could impose significant costs for multi-state insurers that have already developed disclosure statements in compliance with the NAIC model (which does not have the “first page” requirement). Why is it necessary for Pennsylvania’s requirements on this issue to depart from the NAIC model? The Department should explain.

4. Section 83a.7. Department right of review of disclosure statements. – Reasonableness; Clarity.

Request for a completed disclosure statement

This section states, “The Department may request the submission of a completed disclosure statement.” We have two concerns. One, the regulation does not specify under what circumstances the Department would make such a request. The Department should include examples of when it will require submission of completed disclosure statements.

Two, the term “completed” is vague. Based on discussions with the Department, we understand that a “completed” statement refers to a disclosure statement that meets all the requirements of this chapter. However, the determination that a disclosure statement meets the requirements of this chapter will be made *after* the statement is submitted to the Department for review. Therefore, the term “completed” is confusing and should be deleted.

5. Section 83a.9. Penalties. – Statutory authority; Reasonableness; Clarity.

Hold harmless clause

This section includes penalties for failing to make the required disclosure about the product or other violations of this chapter. Commentators assert 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. In the Preamble to the final-form regulation, the Department should explain why a hold harmless clause is unnecessary.

Subsection (d)

This subsection includes a citation to the Unfair Insurance Practices Act (act). This citation represents the entirety of the act. For clarity, the Department should specify which sections of the act would be violated if a failure to make the required disclosures occurs.

Subsection (e)

Under this subsection, “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.” What is the Department’s basis for shifting the burden of proof from the Department to the insurer?

Revised 12/10/01

INDEPENDENT REGULATORY REVIEW COMMISSION

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INDEPENDENT REGULATORY REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Insurance Department's regulation #11-200 (#2265). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Pete Salvatore Date: 6/13/02