

The NAIC solicits comments on this draft on or before March 9, 2009. Underlining and overstrikes show the changes from the existing model. Comments should be sent by email to Jolie Matthews at jmatthew@naic.org.

## ANNUITY DISCLOSURE MODEL REGULATION

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### Section 1. Purpose

The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

### Section 2. Authority

This regulation is issued based upon the authority granted the commissioner under ~~section [cite any enabling legislation and State law corresponding to section 4 of the NAIC Unfair Trade Practices Act].~~

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### Section 3. Applicability and Scope

This regulation applies to all group and individual annuity contracts and certificates except:

~~A. Immediate and deferred annuities that contain no nonguaranteed elements and have no surrender charges;~~

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~~B. (1) Annuities used to fund:~~

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(a) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

(b) A plan described by ~~sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,~~

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(c) A governmental or church plan defined in ~~section 414~~ or a deferred compensation plan of a state or local government or a tax exempt organization under ~~section 457~~ of the Internal Revenue Code; or

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(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(2) Notwithstanding ~~paragraph (1), the regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;~~

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~~C.~~ Structured settlement annuities;

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~~D.~~ [Charitable gift annuities; and]

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~~E.~~ [Funding agreements].

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**Drafting Note:** States that regulate charitable gift annuities should exempt them from the requirements of this regulation. States that recognize or regulate funding agreements as annuities should exempt them from the requirements of this regulation.

#### Section 4. Definitions

For the purposes of this regulation:

- A. ["Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes, but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.]
- B. "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.
- C. "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.
- D. ["Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.]
- E. "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity."
- F. "Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.
- G. "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and/or are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

- H. “Structured settlement annuity” means a “qualified funding asset” as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

**Section 5. Standards for the Disclosure Document and Buyer’s Guide**

- A. (1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in subsection B and the applicable Buyer’s Guide contained in Appendix A, Appendix B or Appendix C.
- (2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the applicable Buyer’s Guide no later than five (5) business days after the completed application is received by the insurer.
- (a) With respect to an application received as a result of a direct solicitation through the mail:
- (i) Providing a Buyer’s Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer’s Guide be provided no later than five (5) business days after receipt of the application.
- (ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract 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.
- (b) With respect to an application received via the Internet:
- (i) Taking reasonable steps to make the Buyer’s Guide available for viewing and printing on the insurer’s website shall be deemed to satisfy the requirement that the Buyer’s Guide be provided no later than five (5) business day of receipt of the application.
- (ii) Taking reasonable steps to make the disclosure document available for viewing and printing 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.
- (c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer’s Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer’s Guide.
- (3) Where the Buyer’s Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.

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- B. At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:
- (1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;
- (2) The insurer’s name and address;

- (3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:
- (a) The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;
  - (b) An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
  - (c) Periodic income options both on a guaranteed and non-guaranteed basis;
  - (d) Any value reductions caused by withdrawals from or surrender of the contract;
  - (e) How values in the contract can be accessed;
  - (f) The death benefit, if available and how it will be calculated;
  - (g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and
  - (h) Impact of any rider, such as a long-term care rider.
- (4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply.
- (5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.
- C. Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

~~D. Compliance with the Financial Industry Regulatory Authority (FINRA) Conduct Rules and Securities and Exchange Commission (SEC) prospectus requirements shall satisfy the requirements under this section for disclosure. However, nothing in the subsection shall limit the commissioner's ability to enforce the provisions of this regulation or require the use of a FINRA-approved disclosure.~~

~~**Drafting Note:** This subsection is intended to grant a safe harbor under this regulation for an annuity contract that is regulated by, and complies with, the FINRA Conduct Rules and the SEC prospectus requirements pertaining to disclosure.~~

**Section 6. Report to Contract Owners**

For annuities in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

- A. The beginning and end date of the current report period;
- B. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
- D. The amount of outstanding loans, if any, as of the end of the current report period.

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**Section 7. Penalties**

In addition to any other penalties provided by the laws of this State, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of section [cite state's unfair trade practices act].

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**Section 8. Separability**

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

**Section 9. Effective Date**

This regulation shall become effective [insert effective date] and shall apply to contracts sold on or after the effective date.

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