WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #2

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2007 MAY 30 PM 4: 15

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY WV Code §§33-2-10 & 33-11-6

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: ~~Disclosure and Deceptive Practices in the~~ Advertisement~~, Solicitation and sale~~ of Life Insurance and Annuities

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 7/2/07 AT 12 noon. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy R. Murphy, Associate Counsel
Offices of the Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Insurance Commissioner
Legislative Rule
Title 114, Series 11

ADVERTISEMENT OF LIFE INSURANCE AND ANNUITIES

TITLE 114, SERIES 11

BRIEF SUMMARY OF RULE

This document represents a major revision in the language of the rule to bring it into conformity with Model Regulation 570 from the National Association of Insurance Commissioners, as amended in 2000. It sets forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts.

Insurance Commissioner
Legislative Rule
Title 114, Series 11

ADVERTISEMENT OF LIFE INSURANCE AND ANNUITIES

TITLE 114, SERIES 11

STATEMENT OF CIRCUMSTANCES

The rule is intended to assure that the interests of prospective purchasers of life insurance and annuities will be protected by providing clear and unambiguous statements, explanations and written proposals concerning the contracts offered to them. This is a major revision in the wording of the rule to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts. The revisions are based on the National Association of Insurance Commissioners' Model Regulation 570, as amended in 2000.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Advertisement of Life Insurance and Annuities (Title 114 - Series 11)

Type of Rule: X Legislative ____ Interpretive ____ Procedural ____ Emergency

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: ____

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: Advertisement of Life Insurance and Annuities (Title 114 - Series 11)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative

_____

Jane L. Cline, Insurance Commissioner

TITLE 114
LEGISLATIVE RULES
OFFICES OF THE INSURANCE COMMISSIONER

SERIES 11
~~DISCLOSURE AND DECEPTIVE PRACTICES IN THE~~
ADVERTISEMENT~~, SOLICITATION AND SALE~~ OF LIFE INSURANCE AND ANNUITIES

Section

114-11-1. General.

114-11-2. Applicability.

114-11-3. Definitions.

114-11-4. Form and ~~Content~~ Contents Of Advertisement ~~Generally~~.

114-11-5. ~~Basic~~ Disclosure Requirements.

114-11-6. ~~Prohibited Deceptive Acts~~ Identity of Insurer.

114-11-7. ~~Special Enforcement Procedures~~ Jurisdictional Licensing and Status of Insurer.

114-11-8. ~~Separability~~ Statements About the Insurer.

114-11-9. ~~Violations~~ Enforcement Procedures.

114-11-10. Conflict With Other Laws or Regulations.

114-11-11. Violations.

FILED
2007 MAY 30 PM 4: 15
OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 114
LEGISLATIVE RULES
OFFICES OF THE INSURANCE COMMISSIONER

SERIES 11
~~DISCLOSURE AND DECEPTIVE PRACTICES IN THE~~ ADVERTISEMENT~~, SOLICITATION AND SALE~~ OF LIFE INSURANCE AND ANNUITIES

§114-11-1. General.

1.1. Scope. -- The purpose of this ~~regulation~~ rule is to assure that the interests of prospective purchasers of life insurance will be safeguarded by providing such persons with clear and unambiguous statements, explanations and written proposals concerning the life insurance contracts offered to them. This purpose can best be achieved by requiring disclosure of certain basic information pertinent to the life insurance contract, and specifying those acts and practices which are deceptive, or misleading or misrepresent the terms of the contract. This rule is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts. This rule is based on the National Association of Insurance Commissioners' Model Regulation 570, as amended in 2000.

1.2. Authority. -- W. Va. Code §§33-2-10 and §33-11-6.

1.3. Filing Date. -- ~~March 22, 1974.~~

1.4. Effective Date. -- ~~April 22, 1974.~~

§114-11-2. Applicability.

a. This ~~regulation~~ rule shall apply to ~~advertisement and any solicitation, negotiation or procurement of life insurance occurring within this State and shall apply to any insurer of life insurance contracts. This regulation shall not apply to individual life insurance wherein the face amount is one thousand dollars ($1000) or less, nor to credit life insurance or group life insurance~~ any life insurance or annuity advertisement intended for dissemination in this state. In variable contracts where disclosure requirements are established pursuant to federal regulation, this rule shall be interpreted so as to eliminate conflict with federal regulation.

b. ~~Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination, of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.~~ All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer, as well as the producer who created or presented the advertisement. Insurers shall establish and at all times maintain a system of control over the content, form and method of dissemination of all

advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to agents, brokers and others authorized by the insurer to disseminate advertisements of the requirement and procedures for company approval prior to the use of any advertisement that is not furnished by the insurer and that clearly sets forth within the notice the most serious consequence of not obtaining the required prior approval.

§114-11-3. Definitions.

3.1. Advertisement~~. An advertisement for the purpose of this regulation shall include:~~ means material designed to create public interest in life insurance or annuities or in an insurer, or in an insurance producer; or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy including:

a. Printed and published material, audio-visual material and descriptive literature of an insurer or insurance producer used in direct mail, newspapers, magazines, radio and television scripts, ~~television scripts~~, billboard and similar displays, and the Internet or any other mass communication media;

b. Descriptive literature and sales aids of all kinds authored by the insurer, its insurance producers, or third parties, issued ~~by an insurer, agent or broker for presentation to members of the insurance buying public~~, distributed or used by the insurer or insurance producer, including, but not limited to, circulars, leaflets, booklets, web pages, depictions, illustrations and form letters; ~~and~~

c. Material used for the recruitment, training and education of an insurer's insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy; and

~~(c)~~ d. Prepared sales talks, presentations and material for use by ~~agents, brokers and solicitors~~ insurance producers.

3.2. "Advertisement" shall not include:

a. Communications or materials used within an insurer's own organization and not intended for dissemination to the public;

b. Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate or retain a policy; and

c. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or

arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

3.3. "Determinable policy 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 policy elements only, or from both determinable and guaranteed policy elements.

3.4. "Guaranteed policy elements" means the premiums, benefits, values, credits or charges under a policy, or elements of formulas used to determine any of these that are guaranteed and determined at issue.

3.5. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

3.6. "Insurer" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's, fraternal benefit society, and any other legal entity which is defined as an "insurer" in the insurance code of this state or issues life insurance or annuities in this state and is engaged in the advertisement of a policy.

3.7. "Nonguaranteed policy element" 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 are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

3.8. "Policy" means any policy, plan, certificate, including a fraternal benefit certificate, contract, agreement, statement of coverage, rider or endorsement which provides for life insurance or annuity benefits.

3.9. "Preneed funeral contract or prearrangement" means an arrangement by or for an individual before the individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

§114-11-4. Form and ~~Content~~ Contents Of Advertisements ~~Generally~~.

4.1. ~~Deception by omission prohibited. -- No advertisement shall omit information or use words, phrases, statements, references or illustrations if such omission or such use has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy or contract benefit payable, loss covered or premium payable~~. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

4.2. ~~Comparisons. -- Advertisements shall not directly or indirectly make unfair or incomplete comparisons of policies or contracts or benefits, nor make comparisons of noncomparable policies or contracts, and shall not disparage competitors, their policies or contracts, services or business methods and shall not disparage or unfairly or inaccurately minimize competing methods of marketing insurance.~~

~~4.3. Statements about insurers - Recommendations generally. -- An advertisement shall not contain statements which are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of an insurer in the insurance business, and shall not contain a recommendation by any commercial rating system unless it clearly indicates the purpose of the recommendation and the limitation of the scope and extent of the recommendation. An advertisement shall not imply that a holding company or subsidiary of an insurer is a separate entity and responsible for the financial condition or contractual obligation of the insurer, unless such is the fact.~~

~~4.4. Deceptive terminology prohibited. -- An advertisement shall not contain words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology. Such words or phrases shall not be used without an appropriate definition or explanation of the meaning of such words or phrases.~~ No advertisement shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "deposit," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," "private pension plan," "retirement plan" or other similar terms in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy to believe that he or she will receive, or that it is possible that he or she will receive, something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

§114-11-5. ~~Basic~~ Disclosure Requirements.

~~5.1. Disclosure required. -- In connection with the selling of life insurance:~~

~~(a) An agent shall inform the prospective purchaser that he is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company for which he is a licensed life insurance agent. Where no agent is involved, an insurer shall inform the prospective purchaser of its full name.~~

~~(b) Either the agent or insurer, as appropriate, shall provide to a prospective purchaser, prior to or in connection with the delivery of a contract, a written proposal describing the elements of the contract including, but not limited to:~~

~~(1) The name and signature of the insurance agent or if no agent is involved the name of the employee of the insurer who assumes responsibility for the proposal;~~

~~(2) The full name of the insurer in which the life insurance is to be written;~~

~~(3) The name of the policy or contract and any supplemental rider;~~

~~(4) Disclosure of any provision in the policy which will reduce the death benefit while the policy is being maintained in force on a premium paying basis, other than a reduction as the result of a suicide provision, and any reduction resulting from a policy loan or similar provision;~~

~~(5) The premiums for the life insurance shown separately from the premiums for each additional supplemental benefit provided in the contract;~~

~~(6) The face amount of the life insurance shown separately from the amounts of coverage for any additional or supplemental benefit provided in the contract; and~~

~~(7) All matters pertaining to life insurance set forth separately from any matter not pertaining to life insurance.~~

~~(c) The written proposal required by this section may be presented in any one of the following forms as appropriate:~~

~~(1) A separate written presentation;~~

~~(2) The policy specifications page; or~~

~~(3) Included in the solicitation material advertising the policy.~~

~~(d) All information required to be disclosed shall be set forth prominently in an uninterrupted sequence in one (1) location of either the separate written proposal, the specifications page or the advertising material. No other material shall be interspersed between any of the items required to be disclosed by this section.~~

5.1 The information required to be disclosed by this rule shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

5.2. An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied or that the policy or contract includes a "free look" period that satisfies or exceeds regulatory requirements, does not remedy misleading statements.

5.3. In the event an advertisement uses "non-medical," "no medical examination required," or similar terms where issue is not guaranteed, terms shall be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions set forth in the application.

5.4. An advertisement shall not use as the name or title of a life insurance policy any phrase that does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance. An advertisement shall not use as the name or title of an annuity contract any phrase that does not include the word "annuity" unless accompanied by other language clearly indicating it is an annuity. An annuity advertisement shall not refer to an annuity as a CD annuity, or deceptively compare an annuity to a certificate of deposit.

5.5. An advertisement shall prominently describe the type of policy advertised.

5.6. An advertisement of an insurance policy marketed by direct response techniques shall not state or imply that because there is no insurance producer or commission involved there will be a cost savings to prospective purchasers unless that is the fact. No cost savings may be stated or implied without justification satisfactory to the commissioner prior to use.

5.7. An advertisement for a life insurance policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, that fact shall be commonly disclosed. An

advertisement of or for a life insurance policy under which the death benefit varies with the length of time the policy has been in force shall accurately describe and clearly call attention to the amount of minimum death benefit under the policy.

5.8. An advertisement for the types of policies described in Subsections 5.6 and 5.7 of this section shall not use the words "inexpensive," "low cost," or other phrase or words of similar import when the policies being marketed are guaranteed issue.

5.9. Premiums

a. An advertisement for a policy with non-level premiums shall prominently describe the premium changes.

b. An advertisement in which the insurer describes a policy where it reserves the right to change the amount of the premium during the policy term, but which does not prominently describe this feature, is deemed to be deceptive and misleading and is prohibited.

c. An advertisement shall not contain a statement or representation that premiums paid for a life insurance policy can be withdrawn under the terms of the policy. Reference may be made to amounts paid into an advance premium fund, which are intended to pay premiums at a future time, to the effect that they may be withdrawn under the conditions of the prepayment agreement. Reference may also be made to withdrawal rights under any unconditional premium refund offer.

d. An advertisement that represents that a pure endowment benefit has a "profit" or "return" on the premium paid, rather than a policy benefit for which a specified premium is paid is deemed to be deceptive and misleading and is prohibited.

e. An advertisement shall not represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact.

f. An advertisement shall not use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan using nonguaranteed elements to pay a portion of future premiums.

5.10. Analogies between a life insurance policy or annuity contract's cash values and savings accounts or other investments and between premium payments and contributions to savings accounts or other investments shall be complete and accurate. An advertisement shall not emphasize the investment or tax features of a life insurance policy to such a degree that the

advertisement would mislead the purchaser to believe the policy is anything other than life insurance.

5.11. An advertisement shall not state or imply in any way that interest charged on a policy loan or the reduction of death benefits by the amount of outstanding policy loans is unfair, inequitable or in any manner an incorrect or improper practice.

5.12. If nonforfeiture values are shown in any advertisement, the values must be shown either for the entire amount of the basic life policy death benefit or for each $1,000 of initial death benefit.

5.13. The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service being made available with a policy unless true. If there is no charge to the insured, then the identity of the payor shall be prominently disclosed. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium or use other appropriate language.

5.14. No insurance producer may use terms such as "financial planner," "investment adviser," "financial consultant" or "financial counseling" in such a way as to imply that he or she is generally engaged in an advisory business in which compensation is unrelated to sales unless that actually is the case. This provision is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

5.15. Nonguaranteed Elements

a. An advertisement shall not utilize or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead.

b. An advertisement shall not state or imply that the payment or amount of nonguaranteed elements is guaranteed. Unless otherwise specified in 114 CSR 11C, if nonguaranteed elements are illustrated, they shall be based on the insurer's current scale and the illustration shall contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.

c. Unless otherwise specified in 114 CSR 11C, an advertisement that includes any illustrations or statements containing or based upon nonguaranteed elements shall set forth, with equal prominence comparable illustrations or statements containing or based upon the guaranteed policy elements.

d. An advertisement shall not use or describe determinable policy elements in a manner that is misleading or has the capacity or tendency to mislead.

e. Advertisement may describe determinable policy elements as guaranteed but not determinable at issue. This description should include an explanation of how these elements operate, and their limitations, if any.

f. If an advertisement refers to any nonguaranteed policy element, it shall indicate that the insurer reserves the right to change any such element at any time and for any reason. However, if an insurer has agreed to limit this right in any way; such as, for example, if it has agreed to change these elements only at certain intervals or only if there is a change in the insurer's current or anticipated experience, the advertisement may indicate any such limitation on the insurer's right.

g. An advertisement shall not refer to dividends as "tax-free" or use words of similar import, unless the tax treatment of dividends is fully explained and the nature of the dividend as a return of premium is indicated clearly.

h. An advertisement may not state or imply that illustrated dividends under either or both a participating policy or pure endowment will be or can be sufficient at any future time to assure without the future payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains the benefits or coverage provided at that time and the conditions required for that to occur.

An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company.

5.16. Testimonials, Appraisals, Analysis, or Endorsements by Third Parties

a. Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective insureds as to the nature or scope of the testimonial, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis; the insurer or insurance producer makes as its own all the statements contained therein, and these statements are subject to all the provisions of this rule.

b. If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the insurer or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

c. An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the insurer, or receives any payment or other consideration from the insurer for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

d. When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of five (5) years after the discontinuance of its use or publication.

5.17. An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any statistics used in advertisement shall be identified.

5.18. Policies Sold to Students

a. The envelope in which insurance solicitation material is contained may be addressed to the parents of students. The address may not include any combination of words which imply that the correspondence is from a school, college, university or other education or training institution nor may it imply that the institution has endorsed the material or supplied the insurer with information about the student unless such is a correct and truthful statement.

b. All advertisements including, but not limited to, informational flyers used in the solicitation of insurance shall be identified clearly as coming from an insurer or insurance producer, if such is the case, and these entities shall be clearly identified as such.

c. The return address on the envelope may not imply that the soliciting insurer or insurance producer is affiliated with a university, college, school or other educational or training institution, unless true.

5.19. Introductory, Initial or Special Offers and Enrollment Periods

a. An advertisement of an individual policy or combination of policies shall not state or imply that the policy or combination of policies is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless that is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.

b. An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

c. An advertisement shall not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the reduced initial premium. A reduced initial or first year premium may not be described as constituting free insurance for a period of time. When insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol that refers the reader to that specific portion of the advertisement that contains the full rate schedule for the policy being advertised.

d. An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than six (6) months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than ten (10) days and not more than forty (40) days from the date on which the enrollment period is advertised for the first time. This rule applies to all advertising media —i.e., mail, newspapers, radio, television, magazines and periodicals —by any one insurer or insurance producer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control. This rule does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to his or her request. It is also inapplicable to solicitations of employees or members of a particular group or association that otherwise would be eligible under specified provisions of the insurance code for group, blanket or franchise insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this rule shall be applied separately to each sponsoring organization.

5.20. An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends or underwriting privileges, unless that is the fact.

5.21. An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends or rates of other insurers. An advertisement shall not disparage other insurers, insurance producers, policies, services or methods of marketing.

5.22. For individual deferred annuity products or deposit funds, the following shall apply:

a. Any illustrations or statements containing or based upon nonguaranteed interest rates shall likewise set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. The nonguaranteed interest rate shall not be greater than those currently being credited by the company unless the nonguaranteed rates have been publicly declared by the company with an effective date for new issues not more than three (3) months subsequent to the date of declaration.

b. If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it shall also disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and the net premiums.

c. If the contract does not provide a cash surrender benefit prior to commencement of payment of annuity benefits, an illustration or statement concerning the contract shall prominently state that cash surrender benefits are not provided.

d. Any illustrations, depictions or statements containing or based on determinable policy elements shall likewise set forth with equal prominence comparable illustrations, depictions or statements containing or based on guaranteed policy elements.

5.23. An advertisement of a life insurance policy or annuity that illustrates nonguaranteed values shall only do so in accordance with current applicable state law relative to illustrating such values for life insurance policies and annuity contracts.

5.24. An advertisement for the solicitation or sale of a preneed funeral contract or prearrangement as defined in subsection 3.9 of this rule that is funded or to be funded by a life insurance policy or annuity contract shall adequately disclose the following:

a. The fact that a life insurance policy or annuity contract is being used to fund a prearrangement as defined in subsection 3.9 of this rule; and

b. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise services, the administrator and any other person.

§114-11-6 ~~Prohibited Deceptive Acts~~ Identity of Insurer.

~~6.1. Generally. -- The following are defined to be unfair acts or deceptive acts in the selling of life insurance subject to this regulation:~~

~~(a) The making of any misrepresentation or false, deceptive or misleading statement;~~

~~(b) The use of terms such as "Estate Planner," "Financial Analyst," "Investment Adviser," "Financial Consultant," "Consultant," "Financial Counseling," or "Securities Adviser," or any derivation of such words or phrases, to imply that the life agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually true;~~

~~(c) The use of comparisons or analogies or the manipulation of amounts and numbers in such a way as to mislead the prospective purchaser concerning:~~

~~(1) The cost of the insurance protection to be provided by the insurance contract; or~~

~~(2) Any other significant aspect of the contract.~~

~~(d) The use of any system or presentation for comparing the cost of life insurance which does not recognize the time value of money. The average net cost method does not take into account the time value of money and its use for comparative purposes is prohibited;~~

~~(e) The reference to an insurance premium as a deposit, an investment, a savings or the use of other phrases of similar import when referring to an insurance premium;~~

~~(f) In respect to participating policies, a description of the policy dividend as other than a refund or return of part of the premium paid, which is not guaranteed and which is dependent on the investment earnings, mortality experience and expense experience of the insurer; or~~

~~(g) Recommending to a prospective purchaser the purchase or replacement of any life insurance policy or annuity contract without reasonable grounds to believe that the recommendation is suitable for the applicant on the basis of information furnished by such~~

~~person after such reasonable inquiry as may be necessary under the circumstances concerning the insurance and annuity needs and means of the prospective purchaser.~~

~~NOTE: (1) Where the purchase of such insurance is recommended by an agent, a written statement signed by the applicant subsequent to the presentation of the written proposal required by Section 4 of this regulation, confirming the applicant's opinion that after a review of his insurance needs and means, he believes the insurance applied for is suitable for him, shall be deemed to satisfy the requirement of this subsection.~~

~~(2) Where the purchase of such insurance is recommended through a direct response solicitation, a written statement signed by the applicant subsequent to the presentation of the written proposal required by Section 4 of the regulation, confirming the applicant's opinion that after a review of his insurance needs and means, he believes the insurance applied for is suitable for him, shall be deemed to satisfy the requirement of this subsection.~~

6.1. The name of the insurer shall be clearly identified in all advertisements about the insurer or its products, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. However, if an advertisement contains a listing of rates or features that is a composite of several different policies or contracts of different insurers, the advertisement shall so state, shall indicate, if applicable, that not all policies or contracts on which the composite is based may be available in all states, and shall provide a rating of the lowest rated insurer and reference the rating agency, but need not identify each insurer. If an advertisement identifies the issuing insurers, insurance issuer ratings need not be stated.

6.2. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, a reinsurer of the insurer, service mark, slogan, symbol or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

6.3. An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with a governmental program or agency.

§114-11-7. ~~Special Enforcement Procedures~~ Jurisdictional Licensing and Status of Insurer.

~~7.1. Filing of advertisements. -- The Commissioner in his discretion may require that an insurer file with this Department advertising materials for review prior to use. When so required, such advertising material must be filed not less than a reasonable time to be specified by the Commissioner prior to the date the insurer desires to use the advertisement in West Virginia.~~

7.1. An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

7.2. An advertisement may state that an insurer or insurance producer is licensed in a particular state or states, provided it does not exaggerate that fact or suggest or imply that competing insurers or insurance producers may not be so licensed.

7.3. An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. However, where a governmental entity has recommended or endorsed a policy form or plan, that fact may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement.

§114-11-8. ~~Separability~~ Statements About the Insurer.

~~8.1. Partial invalidity. -- If any provision of this regulation shall be held invalid, the remainder of the regulation shall not be affected thereby.~~

An advertisement shall not contain statements, pictures or illustrations which are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation, including, but not limited to, the placement of insurer's rating in the hierarchy of the rating system cited.

§114-11-9. ~~Violations~~. Enforcement Procedures.

~~Any insurer failing to comply with the requirements of this regulation shall be subject to such penalties as may be appropriate under the laws of West Virginia.~~

9.1. Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its individual policies and specimen copies of typical printed, published or prepared advertisements of its blanket,

franchise and group policies, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. The file shall be subject to inspection by the department. All advertisements shall be maintained in the file for a period of five (5) years after discontinuance of its use or publication.

9.2. If the commissioner determines that an advertisement has the capacity or tendency to mislead or deceive the public, the commissioner may require an insurer or insurance producer to submit all or any part of the advertising material for review or approval prior to use.

9.3. Each insurer subject to the provisions of these rules shall file with the commissioner with its anual statement a certificate of compliance executed by an authorized officer of the insurer stating that to the best of his or her knowledge, information and belief the advertisements which were disseminated by or on behalf of the insurer in this state during the preceding statement year, or during the portion of the year when these rules were in effect, complied or were made to comply in all respects with the provisions of these rules and the insurance laws of this state as implemented and interpreted by this rule.

§114-11-10. Conflict With Other Laws or Regulations.

It is not intended that this rule conflict with or supersede any rule currently in force or subsequently adopted in this state governing specific aspects of the sale or replacement of life insurance including, but not limited to, laws or rules dealing with life insurance cost comparison indices, deceptive practices in the sale of life insurance, replacement of life insurance policies, illustration of life insurance policies, and annuity disclosure. Consequently, no disclosure pursuant to or required under those rules shall be deemed to be an advertisement within the meaning of this rule.

§114-11-11. Violations.

Any insurer failing to comply with the requirements of this rule shall be subject to such penalties as are prescribed in W. Va. Code §33-3-11.