

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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FILED

2014 AUG -1 P 1:45

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Offices of the Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY WV Code § 33-2-10

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11E

TITLE OF RULE BEING AMENDED: Annuity Disclosure

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

Insurance Commissioner
Legislative Rule
Title 114, Series 11E

ANNUITY DISCLOSURE

TITLE 114, SERIES 11E

BRIEF SUMMARY OF RULE

During the summer of 2013, the National Association of Insurance Commissioners modified its Annuity Disclosure Model Regulation to implement a new "Annuity Buyer's Guide" and define standards for annuity illustrations. The Commissioner seeks to adopt these changes by amending 114 CSR 11E. Rather than incorporating the Buyer's Guide into the rule as it is currently, the amendments would simply reference the Buyer's Guide as adopted by the NAIC. This will make for a more efficient transition should future changes to the Buyer's Guide be approved by the NAIC. Also, Rule 11E presently does not contain any standards that an insurer must follow if it elects to provide a consumer with an annuity illustration.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 1, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: Annuity Disclosure
Title 114, Series 11E

1. Authorizing statute(s) citation:

West Virginia Code §33-2-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 24, 2014 (notice of public comment period).

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) or Public Comment Period ended:

Public comment period ended on July 24, 2014.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

**e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)**

August 1, 2014

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Andrew R. Pauley, CPCU, PIR
General Counsel
WV Offices of the Insurance Commissioner
1124 Smith Street 1 P.O. Box 50540
Charleston, WV 25305-0540
304.558.6279 1 ext. 1402
Andrew.Pauley@wvinsurance.gov

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

N/A

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
- b. Date of hearing or comment period:
- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
- d. Attach findings and determinations and reasons:

ATTACHMENT TO QUESTION 2(d):

The Offices of the Insurance Commissioner received comments from the Insured Retirement Institute (“IRI”) and the American Council of Life Insurers (“ACLI”). These comments are addressed below.

1) IRI is concerned that the reference to the NAIC Buyer’s Guide is not sufficiently specific and could create potential uncertainty or interpretive issues. In 2012, the NAIC revised the Buyer’s Guide for Deferred Annuities into three new versions – one for fixed or fixed indexed annuities, one for variable annuities, and a combined version that covers fixed and variable products. IRI feels that the definition of “Buyer’s Guide” as currently written in the rule does not make clear to carriers and producers which version of the 2013 Guide that they are required to use. They suggest amending 3.1 to read as follows:

3.1. “Buyer’s Guide” means, for the purposes of this regulation, ~~the National Association of Insurance Commissioner’s approved Annuity Buyer’s Guide;~~

3.1.a. For sales of fixed or fixed indexed annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred Annuities – Fixed”, dated 2013, as adopted by and available from the National Association of Insurance Commissioners (NAIC); and

3.2.a. For sales of variable annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred Annuities-Variable,” dated 2013, as adopted by and available from the NAIC.

The Commissioner agrees that clarity is needed but declines to assign a specific version of the “Buyer’s Guide.” The Commissioner will amend the rule to read as follows:

3.1. “Buyer’s Guide” means, for the purposes of this regulation, the National Association of Insurance Commissioners’ approved Annuity Buyer’s Guide, in its most current version.

3.1.a. For sales of fixed or fixed indexed annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred

Annuities – Fixed”, as adopted by and available from the National Association of Insurance Commissioners (NAIC); and

3.2.a. For sales of variable annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred Annuities-Variable,” as adopted by and available from the NAIC.

2) IRI and ACLI both state that the NAIC added a new Drafting Note to the model to address a potential federal preemption issue. IRI states that the Congressionally-enacted National Securities Markets Improvement Act of 1996 (“NSMIA”) prohibits states from making laws establishing record-making or record-keeping requirements for broker-dealers. The NAIC’s Life Insurance and Annuities “A” Committee determined, and IRI agrees, that Section 3.D(1) of the Model Regulation would potentially violate NSMIA, and therefore the NAIC developed the Drafting Note to bring this potential conflict to the attention of any states considering adoption of the Model. ACLI points out that the NAIC was aware of the potential for court challenges if the language was included, which led to the creation and inclusion of the Drafting Note. ACLI further notes that other states which have updated their annuity disclosure regulations have followed the NAIC drafting note and have omitted the language in question. Both ACLI and IRI urge that a portion of section 2.1.g be stricken from the rule. The Commissioner agrees and amends section 2.1.g as follows:

2.1.g. Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, ~~provided that compliance with Section 4 of this rule shall be required after January 1, 2015, unless, or until such time as, the SEC has 2-Section 3D(1) of the Model would extend the disclosure document delivery requirements to variable annuities after January 1, 2014 unless the SEC adopts a summary prospectus rule or FINRA approves a simplified disclosure form for variable annuities. adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.~~

3) IRI and ACLI both comment to request the Offices of the Insurance Commissioner set an effective date for this rule to be six months from adoption to give companies adequate time to change their systems and comply with the new requirements. IRI also points out that other states that have adopted revisions to their Annuity Disclosure rules have provided at least six months between adoption and the effective date of the regulation. The Commissioner understands the need for companies to have sufficient time to comply with these regulations; however, due to the procedural

requirements stemming from rule-making in West Virginia, the Commissioner believes that insurers will have ample time to prepare for the rule changes prior to the rule's effective date. Moreover, because the amendments are being made pursuant to a NAIC model regulation that was adopted in 2012, most insurance carriers offering annuity products should already be familiar with the rule's amended language.



Michael Rowden
Legislative Director, State Relations

July 15, 2014

Commissioner Michael D. Riley
West Virginia Offices of the Insurance Commissioner
1124 Smith Street
P.O. Box 50540
Charleston, West Virginia 25305-0540

RE: Proposed Rule 114-11E-1+ (Annuity Disclosure)

Dear Commissioner Riley:

I am writing on behalf of the American Council of Life Insurers (ACLI) a Washington, D.C.-based trade association with more than 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security protection. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Two hundred forty-seven ACLI member companies provide financial and retirement security protection to families in West Virginia. Ninety-three percent of all life and annuity payments in West Virginia are from ACLI member companies.

We appreciate the opportunity to offer comments on the Offices' proposed amendments to Rule 114-11E. ACLI supports the NAIC Annuity Disclosure Model Regulation and to the extent the proposed amendments to Rule 114-11E incorporate the current Model's provisions, we are supportive. Based on comments received from a number of ACLI member companies, we do however suggest that the following language in Section 114-11E-2.1g be deleted:

~~2.1.g. Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, provided that compliance with Section 5 shall be required unless, or until such time as, the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.~~

The NAIC had approved a drafting note to the Annuity Disclosure Model on this issue:

"States should be aware that the provision in paragraph (1) above requiring transactions involving variable annuities and other registered products to comply with the requirements of Section 5 of the regulation after Jan. 1, 2014 unless the U.S. Securities and Exchange Commission (SEC) adopts a summary prospectus rule or the Financial Industry Regulatory Authority (FINRA) approves for use a simplified disclosure form applicable to variable annuities or other registered products could be preempted by the National Securities Markets

Improvement Act of 1996 (NSMIA). NSMIA prohibits the States from making laws establishing record-making or record-keeping requirements for broker-dealers. Given this, in adopting this regulation, States may want to omit the language in paragraph (1) above that eliminates the exemption for these transactions after Jan. 1, 2014 and, as a consequence, would require broker-dealers to comply with Section 5 of this regulation unless or until the SEC or FINRA takes the delineated action. States should consider only adopting the language from paragraph (1) above that exempts transactions involving variable annuities and other registered products in compliance with the SEC and FINRA rules relating to disclosures and illustrations from having to comply with the regulation."

Including the proposed language of Subsection Section 114-11E-2.1g raises the issue of federal pre-emption. The NAIC was aware of the potential for court challenges if the language was included, which led to the creation and inclusion of this drafting note.

To provide you with background on this issue, we offer the pertinent NAIC (A) Committee minutes from the two final meetings in 2013.

Summer National Meeting 2013

Exposed the Draft Guideline Amendment to Model #245

Jolie Matthews (NAIC) said that, at the Committee's meeting during the Spring National Meeting, there was a brief discussion concerning a provision in Model #245 that appears to be preempted by the federal National Securities Markets Improvement Act of 1996 (NSMIA). Section 3D(1) in Model #245 requires transactions involving variable annuities and other registered products in compliance with SEC rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations to comply with Section 5 of Model #245 after Jan. 1, 2014, unless or until the SEC adopts a summary prospectus rule or FINRA approves for use a simplified disclosure form applicable to variable annuities or other registered products. Ms. Matthews said this provision is problematic because NSMIA prohibits the states from making laws establishing record-making or recordkeeping requirements for broker-dealers. She said that, given this, the states should not adopt this provision in Section 3D(1). Ms. Matthews said the proposed guideline line amendment, which is a drafting note to this provision, alerts the states of the problem and suggests that they not adopt the relevant provision in Section 3D(1). She said she is suggesting a guideline amendment instead of an amendment to Model #245 using the NAIC model law development procedures because this approach took less time and, as such, would result in the Committee being able to consider adopting the proposed guideline amendment prior to or at the Fall National Meeting.

Director Range motioned, and Commissioner McCarty seconded, to expose the draft guideline amendment to Model #245 for a 30-day comment period (Attachment Five). The motion passed unanimously.

Fall National Meeting 2013

Adopted Guideline Amendments to Annuity Disclosure Model Regulation (#245) Commissioner McPeak said that, at the Summer National Meeting, the Committee voted to expose for a 30-day comment period proposed guideline amendments to the Annuity Disclosure Model Regulation (#245) (refer to Attachment Five of the Life Insurance and Annuities (A) Committee Minutes, NAIC Proceedings – Summer 2013). She said NAIC staff distributed the draft by email Sept. 10 to Committee members, interested regulators and interested parties with a Sept. 26 comment deadline. No comments were received.

July 15, 2014

Page 3

Commissioner McPeak said the purpose of the guideline amendments to Model #245 is to alert states that a provision in section 3D of the model could be preempted by the federal National Securities Markets Improvement Act of 1996 (NSMIA) because this provision requires transactions involving variable annuities and other registered products in compliance with U.S. Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations to comply with Section 5 of the model after Jan. 1, 2014, unless or until the SEC adopts a summary prospectus rule or FINRA approves for use a simplified disclosure form applicable to variable annuities or other registered products. She explained that this provision is problematic because NSMIA prohibits states from making laws establishing record-making or record-keeping requirements for broker-dealers. Therefore, the disclosure requirements in Section 5 of the model could be subject to federal preemption. Commissioner McPeak noted that the requirement in Section 5 of the model that a buyer's guide be provided to the consumer does not encounter the same preemption issues.

Commissioner McCarty motioned, and Mr. Easton seconded, to adopt the guideline amendments to Model #245. The motion passed unanimously.

We would note that other states which have updated their annuity disclosure regulation have followed the NAIC drafting note above and have omitted the language in question.

Finally, this proposal will require companies to change their systems and procedures for West Virginia. We respectfully request that insurers be provided with a delayed six month effective date to comply with these new requirements. This will provide our member companies with adequate lead time to develop and implement the procedures and systems changes necessary to comply with this rule.

In summary, although we are supportive of West Virginia's proposed update consistent with the NAIC Model, we again request that West Virginia follow the NAIC's drafting note and omit the stricken language above and provide for a six-month delayed effective date.

Thank you for the opportunity to comment on the proposed amendments to Rule 114-11E.

Respectfully Submitted,

A handwritten signature in black ink that reads "Michael Rowden". The signature is written in a cursive, flowing style.

Michael Rowden



Insured Retirement Institute
1101 New York Avenue, NW | Suite 825
Washington, DC 20005

t 202-469-3000
f 202-469-3030

www.IRIONline.org

July 24, 2014

The Honorable Michael D. Riley
Commissioner
West Virginia Offices of the Insurance Commissioner
1124 Smith Street
Charleston, West Virginia 25301

Via E-Mail: Andrew.pauley@wvinsurance.gov

Re: Proposed Annuity Disclosure Regulation – Title 114, Series 11E

Dear Commissioner Riley:

On behalf of our members, the Insured Retirement Institute (“IRI”)¹ appreciates the opportunity to provide comments to the West Virginia Offices of the Insurance Commissioner (the “Commissioner’s Office”) regarding the proposed amendments to West Virginia’s Annuity Disclosure Regulation, Title 114, Series 11E (the “Proposal”), which is modeled after the 2011 version of the National Association of Insurance Commissioners (“NAIC”) Annuity Disclosure Model Regulation (the “Model”). The Model sets standards for the disclosure of information about annuity contracts to protect consumers, foster consumer education, and ensure that purchasers of annuity contracts understand certain basic features of annuity contracts. In this letter, we will provide comments regarding the definition of the term “Buyer’s Guide,” a federal preemption issue, and the effective date of the Proposal.

IRI and our members strongly support uniform adoption of the Model. The 1999 version of the Model is currently in effect in 27 jurisdictions, including West Virginia. The 2011 Model, which imposes new illustration requirements and extends the disclosure document and buyer’s guide requirements to

¹ The Insured Retirement Institute (IRI) has been called the “primary trade association for annuities” by U.S. News and World Report. IRI proudly leads a national consumer coalition of more than 20 organizations, and is the only association that represents the entire supply chain of insured retirement strategies. IRI members are the major insurers, asset managers, broker-dealers/distributors, and 150,000 financial professionals. As a not-for-profit organization, IRI provides an objective forum for communication and education, and advocates for the sustainable retirement solutions Americans need to help achieve a secure and dignified retirement.

variable annuities, is in place in one state (Iowa), and is scheduled to take effect within the next several months in three others (Colorado, Ohio, and Rhode Island). In addition, proposals to adopt the 2011 Model are currently pending in two states (Alabama and West Virginia). We commend the Commissioner's Office for undertaking to extend the protections provided by the 2011 version of the Model to West Virginia consumers in connection with sales of annuities.

On behalf of our members, we respectfully offer the following comments about the Proposal:

Definition of "Buyer's Guide"

Section 3.1 of the Proposal defines "Buyer's Guide" as "the National Association of Insurance Commissioner's approved Annuity Buyer's Guide." As we will explain below, we are concerned that this reference to the NAIC Buyer's Guide is not sufficiently specific, and could therefore create potential uncertainty or interpretive issues.

As you know, in 2012, the NAIC undertook to review and revise the Buyer's Guide for Deferred Annuities, which was originally adopted in 1999 (the "1999 Guide"). As noted in the Department's recent Bulletin No. B-4.67, the NAIC adopted a revised Buyer's Guide in 2013. In fact, the NAIC created three new versions of the Buyer's Guide – one for fixed and fixed-indexed annuities, one for variable annuities, and a combined version that covers fixed and variable products (collectively, the "2013 Guide"). IRI played an active role in the revision process, offering numerous recommendations to improve the Buyer's Guide. The final version was developed through the combined efforts of IRI, other industry trade groups, the NAIC's consumer representatives, and the NAIC Annuity Disclosure (A) Working Group. We believe the 2013 Guide is a vast improvement over the 1999 Guide, in terms of both the quality of the information it provides and the manner in which that information is presented.

As currently written, we are concerned that the Proposal does not make clear to carriers and producers which version of the 2013 Guide they are required to use. The rationale for developing different versions of the 2013 Guide was to allow carriers and producers to determine – based on the relevant circumstances – which version would be most appropriate to provide. There are legitimate reasons why a carrier or producer might prefer to use a particular version in different circumstances. For example, producers who are not licensed to sell variable products might be uncomfortable providing the combined version, which includes extensive information about products they are not licensed to sell, and might therefore feel compelled to not make any annuity products available to their clients. Our recommended approach (as described below) would avoid this unintended outcome.

Accordingly, we believe it would be appropriate for the Department to permit carriers and producers to use either the fixed-only version or the combined version in connection with sales of fixed or fixed-indexed annuities, and to use either the variable-only version or the combined version in connection with sales of variable annuities.

In addition, we note that, at present, the 1999 Guide and all three versions of the 2013 Guide are being published by the NAIC. While this is necessary to allow for an orderly transition from the 1999 Guide to the 2013 Guide throughout the states, it also creates possible confusion if the states do not clearly express their intentions as to when carriers and producers must begin using the 2013 Guide and cease using the 1999 Guide.

Based on the foregoing, IRI respectfully recommends that the Department revise Section 3.1 of the Proposal to read as follows:

- A. ~~“Buyer’s Guide” means, for the purposes of this regulation, the National Association of Insurance Commissioner’s approved Annuity Buyer’s Guide:~~
- a. For sales of fixed or fixed-indexed annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred Annuities – Fixed”, dated 2013, as adopted by and available from the National Association of Insurance Commissioners (NAIC); and
 - b. For sales of variable annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred Annuities – Variable”, dated 2013, as adopted by and available from the NAIC.

Federal Preemption Issue

As you may know, in late 2013, the NAIC added a new Drafting Note to the Model to address a potential federal preemption issue. Specifically, the Congressionally-enacted National Securities Markets Improvement Act of 1996 (“NSMIA”) prohibits states from making laws establishing record-making or record-keeping requirements for broker-dealers. The NAIC Life Insurance and Annuities “A” Committee determined, and we agree, that Section 3.D(1) of the Model² would potentially violate NSMIA, and therefore developed the Drafting Note to bring this potential conflict to the attention of any states considering adoption of the Model. The Committee received no objecting comments regarding the Drafting Note and approved it unanimously. The Drafting Note is now included in the Model following approval by the NAIC Executive Committee and Plenary at the Fall 2013 NAIC National Meeting.

Accordingly, we respectfully request that the Commissioner’s Office revise the corresponding section of the Proposal – Section 2.1.g – as follows:

- 2.1.g. Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, ~~provided that compliance with Section 4 of this rule shall be required after January 1, 2015, unless, or until such time as, the SEC has~~

² Section 3.D(1) of the Model would extend the disclosure document delivery requirements to variable annuities after January 1, 2014 unless the SEC adopts a summary prospectus rule or FINRA approves a simplified disclosure form for variable annuities.

Letter to Commissioner Michael D. Riley

July 24, 2014

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~~adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products~~

Effective Date

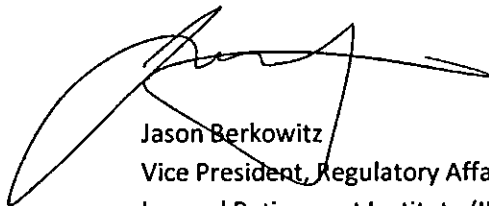
We respectfully request that the Commissioner's Office provide at least six (6) months between adoption and the effective date of the Proposal. The Proposal would, for the first time in West Virginia, extend the requirements of the disclosure regulation to variable annuities. To comply with these changes, our member companies will need adequate time to develop and implement changes to their systems and compliance procedures. As noted above, only four states have adopted the current version of the Model to date, and each of them provided at least six months between adoption and the effective date of the regulation. Accordingly, we respectfully request that the Commissioner's Office provide an effective date for the Proposal that is at least six months after adoption.

Conclusion

In closing, we would like to emphasize the importance of uniformity in adoption, implementation and enforcement of the Model throughout the states. In addition to the obvious benefits for insurers and producers in terms of managing compliance with state regulations and the costs associated with compliance, uniformity is critical to ensure that all Americans are afforded the same level of consumer protection across the states.

Please feel free to contact me at (202) 469-3014 if you have any questions or would like to discuss this matter further.

Sincerely,



Jason Berkowitz
Vice President, Regulatory Affairs and Compliance
Insured Retirement Institute (IRI)

Cc: Andrew Pauley, General Counsel

Insurance Commissioner
Legislative Rule
Title 114, Series 11E

ANNUITY DISCLOSURE

TITLE 114, SERIES 11E

STATEMENT OF CIRCUMSTANCES

During the summer of 2013, the National Association of Insurance Commissioners modified its Annuity Disclosure Model Regulation to implement a new "Annuity Buyer's Guide" and define standards for annuity illustrations. Prior to this change, West Virginia adopted the previous model regulation with the promulgation of 114 CSR 11E. An appendix to the rule includes the now outdated Buyer's Guide, which insurers are required to furnish to applicants for annuity products. Since the Buyer's Guide is incorporated within the rule, the rule will need to be amended before we can require insurers to provide the revised Buyer's Guide. Moreover, Rule 11E currently does not contain any standards that an insurer must follow if it elects to provide a consumer with an annuity illustration.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Annuity Disclosure (Title 114, Series 11E)

Type of Rule: X Legislative Interpretive Procedural

Agency: WV Offices of the Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Albert T. Summers Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Andrew.Pauley@wvinsurance.gov

Fiscal Note Summary

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

N/A

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	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Equipment	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

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

None

MEMORANDUM

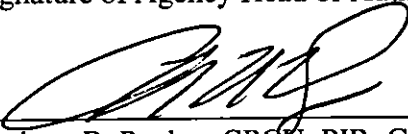
Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date:

7/31/14

Signature of Agency Head or Authorized Representative



Andrew R. Pauley, CPCU, PIR, General Counsel
WV Offices of the Insurance Commissioner
P. O. Box 50540
Charleston WV 25305-0540
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**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 11E
ANNUITY DISCLOSURE**

Section.

- 114-11E-1. General.
- 114-11E-2. Applicability.
- 114-11E-3. Definitions.
- 114-11E-4. Standards for the Disclosure Document and Buyer's Guide.
- 114-11E-5. ~~Reports to Contract Owners:~~ Standards for Annuity Illustrations.
- 114-11E-6. ~~Penalties:~~ Report to Contract Owners.
- 114-11E-7. Penalties.

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 11E
ANNUITY DISCLOSURE**

FILED

2014 AUG -1 P 1:45

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-11E-1. General.

1.1. Scope. -- The purpose of this rule is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The rule specifies the minimum information which must be disclosed, ~~and the method for disclosing it, and the use and content of illustrations, if used,~~ in connection with the sale of annuity contracts. The goal of this rule is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts. This rule is based on the National Association of Insurance Commissioners' "Annuity Disclosure Model Regulation" (Model 245), as amended in 2008 2011.

1.2. Authority. -- W. Va. Code §33-2-10.

1.3. Filing Date. -- ~~April 14, 2010~~:

1.4. Effective Date. -- ~~July 16, 2010~~:

§114-11E-2. Applicability.

2.1. This rule applies to all group and individual annuity contracts and certificates except:

~~2.1.a. Registered or non-registered variable annuities or other registered products;~~

2.1.ba. Immediate and deferred annuities that do not contain non-guaranteed elements;

2.1.cb.

2.1.cb.1. Annuities used to fund:

2.1.cb.1.A. An employee pension plan which is covered by the Employee Retirement Income Security Act ("ERISA");

2.1.cb.1.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;

2.1.cb.1.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

Title 114, Series 11E
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Section 457 of the Internal Revenue Code; or

2.1.cb.1.D. A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

2.1.cb.2. Notwithstanding paragraph ~~1~~, ~~subdivision c~~ of this subsection ~~2.1.b.1~~, ~~the~~ this rule 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 may not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and

2.1.dc. Structured settlement annuities;

2.1.d. Charitable gift annuities;

2.1.e. Funding agreements;

2.1.f. Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.); and

2.1.g. Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations;

2.1.g.1. Notwithstanding subdivision 2.1.g, the delivery of the Buyer's Guide is required in sales of variable annuities, and when appropriate, in sales of other registered products.

2.1.g.2. Nothing in this subsection shall limit the Commissioner's ability to enforce the provisions of this rule or to require additional disclosure.

§114-11E-3. Definitions.

3.1. "Buyer's Guide" means the National Association of Insurance Commissioners' approved Annuity Buyer's Guide, in its most current version.

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3.1.a. For sales of fixed or fixed indexed annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyer’s Guide for Deferred Annuities-Fixed,” as adopted by and available from the National Association of Insurance Commissioners (“NAIC.”).

3.1.b. For sales of variable annuities, either the “Buyer’s Guide for Deferred Annuities” or the “Buyers Guide for Deferred Annuities - Variable,” as adopted by and available from the NAIC.

3.1.b. For sales of

3.2. “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.

3.3. “Contract owner” means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

3.24. “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.

3.5. “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.

3.36. “Generic name” means a short title descriptive of the annuity contract being applied for or illustrated such as “single premium deferred annuity.”

3.47. “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~~ or have determinable elements at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are

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guaranteed.

3.8. "Illustration" means a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.

3.9. "Market Value Adjustment" or "MVA" feature is a positive or negative adjustment that may be applied to the account value and/or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company's current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

3.510. "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, 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 non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

3.611. "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.

§114-11E-4. Standards for the Disclosure Document and Buyer's Guide.

4.1.

4.1.a. 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 4.2 and the Buyer's Guide, if any contained in Appendix A.

4.1.b. 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 Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

4.1.b.1. With respect to an application received as a result of a direct solicitation through the mail:

4.1.b.1.A. 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

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Guide be provided no later than five (5) business days after receipt of the application.

4.1.b.1.B. 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.

4.1.b.2. With respect to an application received via the Internet:

4.1.b.2.A. 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.

4.1.b.2.B. 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.

4.1.b.3. 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 Commissioner 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.

4.1.c. 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 rule.

4.2. At a minimum, the following information shall be included in the disclosure document required to be provided under this rule:

4.2.a. The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;

4.2.b. The insurer's legal name, and physical address, website address and telephone number;

4.2.c. A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:

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4.2.c.1. The guaranteed ~~and~~ non-guaranteed ~~and determinable~~ elements of the contract, and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spread, and an explanation of how they operate;

4.2.c.2. An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, 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;

4.2.c.3. Periodic income options both on a guaranteed and non-guaranteed basis;

4.2.c.4. Any value reductions caused by withdrawals from or surrender of the contract;

4.2.c.5. How values in the contract can be accessed;

4.2.c.6. The death benefit, if available and how it will be calculated;

4.2.c.7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

4.2.c.8. Impact of any rider, ~~such as a~~ including, but not limited to, a guaranteed living benefit or long-term care rider;

4.2.d. Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

4.2.e. Information about the current guaranteed rate or indexed crediting rate formula, if applicable, for new contracts that contains a clear notice that the rate is subject to change.

4.3. Insurers shall define terms used in the disclosure document in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure document is directed.

§114-11E-5. Standards for Annuity Illustrations.

5.1. An insurer or producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this section and;

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5.1.a. Clearly labeled as an illustration;

5.1.b. Includes a statement referring consumers to the disclosure document and Buyer's Guide provided to them at the time of purchase for additional information about their annuity; and

5.1.c. Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of illustrations.

5.2. An illustration furnished an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

5.3. The illustration shall not be provided unless accompanied by the disclosure document referenced in section 4.

5.4. When using an illustration, the illustration shall not:

5.4.a. Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

5.4.b. State or imply that the payment or amount of non-guaranteed elements is guaranteed; or

5.4.c. Be incomplete.

5.5. Costs and fees of any type shall be individually noted and explained.

5.6. An illustration shall conform to the following requirements:

5.6.a. The illustration shall be labeled with the date on which it was prepared;

5.6.b. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");

5.6.c. The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;

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5.6.d. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the contract is assumed to have been in force;

5.6.e. The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;

5.6.f. Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;

5.6.g. Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;

5.6.h. The non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;

5.6.i. In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent ten calendar years; one to reflect the historical performance of the index for the continuous period of ten calendar years out of the last twenty calendar years that would result in the least index value growth (the "low scenario"); one to reflect the historical performance of the index for the continuous period of ten calendar years out of the last twenty calendar years that would result in the most index value growth (the "high scenario"). The following requirements apply:

5.6.i.1. The most recent ten calendar years and the last twenty calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;

5.6.i.2. If any index utilized in determination of an account value has not been in existence for at least ten calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least ten calendar years, the allocation to such indexed account(s) shall be assumed to be zero;

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5.6.i.3. If any index utilized in determination of an account value has been in existence for at least ten calendar years but less than twenty calendar years, the ten calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;

5.6.i.4. The non-guaranteed element(s), such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element(s);

5.6.i.5. If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:

5.6.i.5.A. The allocation used in the illustration shall be the same for all three scenarios; and

5.6.i.5.B. The ten calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option.

5.6.i.6. The geometric mean annual effective rate of the account value growth over the ten calendar year period shall be shown for each scenario;

5.6.i.7. If the most recent ten calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection 5.8, the most recent ten calendar year historical period experience of the index shall be used for each subsequent ten calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;

5.6.i.8. The low and high scenarios:

5.6.i.8.A. Need not show surrender values (if different than account values);

5.6.i.8.B. Shall not extend beyond ten calendar years (and therefore are not subject to the requirements of subsection 5.8 beyond subsection 5.8.a.1; and

5.6.i.8.C. Maybe shown on a separate page. A graphical presentation shall also be included comparing the movement of the account value over the ten calendar year period for the low scenario, the high scenario and the most recent ten calendar year scenario; and

5.6.i.9. The low and high scenarios should reflect the irregular nature of the

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index performance and should trigger every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state;

5.6.j. The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., “see page 1 for guaranteed elements”);

5.6.k. The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;

5.6.l. The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;

5.6.m. Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;

5.6.n. Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

5.6.n.1. The benefits and values are not guaranteed;

5.6.n.2. The assumptions on which they are based are subject to change by the insurer; and

5.6.n.3. Actual results may be higher or lower;

5.6.o. Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps or spreads for fixed indexed annuities;

5.6.p. The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;

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5.6.q. Illustrations shall be concise and easy to read;

5.6.r. Key terms shall be defined and then used consistently throughout the illustration;

5.6.s. Illustrations shall not depict values beyond the maximum annuitization age or date;

5.6.t. Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and

5.6.u. Illustrations shall show both annuity income rates per \$ 1,000.00 and the dollar amounts of the periodic income payable.

5.7. An annuity illustration shall include a narrative summary that includes the following unless provided at the same time in a disclosure document:

5.7.a. A brief description of any contract features, riders or options, guaranteed and/or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;

5.7.b. A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;

5.7.c. Identification and a brief definition of column headings and key terms used in the illustration;

5.7.d. A statement containing in substance the following:

5.7.d.1. For other than fixed indexed annuities:

“This illustration assumes the annuity’s current non-guaranteed elements will not change. It is likely that they will change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.”

“The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer’s Guide provided with your Annuity Contract for more detailed information.”

5.7.d.2. For fixed indexed annuities:

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“This illustration assumes the index will repeat historical performance and that the annuity’s current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index will not repeat historical performance, the non-guaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.”

“The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer’s Guide provided with your Annuity Contract for more detailed information;” and

5.7.e. Additional explanations as follows:

5.7.e.1. Minimum guarantees shall be clearly explained;

5.7.e.2. The effect on contract values of contract surrender prior to maturity shall be explained;

5.7.e.3. Any conditions on the payment of bonuses shall be explained;

5.7.e.4. For annuities sold as an IRA, qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained;

5.7.e.5. For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur; and

5.7.e.6. A brief description of the types of annuity income options available shall be explained, including:

5.7.e.6.A. The earliest or only maturity date for annuitization (as the term is defined in the contract);

5.7.e.6.B. For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age seventy or ten years after issue, but in no case later than the maximum annuitization age or date in the contract;

5.7.e.6.C. For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and

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5.7.e.6.D. The periodic income amount based on the currently available periodic income rates for the annuity income option in subparagraph 5.7.e.6.B or subparagraph 5.7.e.6.C, if desired.

5.8. Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

5.8.a.

5.8.a.1. First ten contract years; or

5.8.a.2. Surrender charge period if longer than ten years, including any renewal surrender charge period(s);

5.8.b. Every tenth contract year up to the later of thirty years or age seventy; and

5.8.c.

5.8.c.1. Required annuitization age; or

5.8.c.2. Required annuitization date.

5.9. If the annuity contains a market value adjustment, hereafter MVA, the following provisions apply to the illustration:

5.9.a. The MVA shall be referred to as such throughout the illustration;

5.9.b. The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;

5.9.c. The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;

5.9.d. A statement, containing in substance the following, shall be included:

When you make a withdrawal, the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.

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5.9.e. Illustrations shall describe both the upside and the downside aspects of the contract features relating to the MVA;

5.9.f. The illustrative effect of the MVA shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a MVA;

5.9.g. Actual MVA floors and ceilings as listed in the contract shall be illustrated;
and

5.9.h. If the MVA has significant characteristics not addressed by subdivisions a through g of this subsection, the effect of such characteristics shall be shown in the illustration.

5.10. A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:

5.10.a. An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:

5.10.a.1. The Index(es) which will be used to determine the index-based interest;

5.10.a.2. The Indexing Method -- such as point-to-point, daily averaging, monthly averaging;

5.10.a.3. The Index Term -- the period over which indexed-based interest is calculated;

5.10.a.4. The Participation Rate, if applicable;

5.10.a.5. The Cap, if applicable; and

5.10.a.6. The Spread, if applicable;

5.10.b. The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;

5.10.c. The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and

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5.10.d. If the product allows the contract holder to make allocations to declared-rate segment, then the narrative shall include a brief description of:

5.10.d.1. Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and

5.10.d.2. Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.

5.11. A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:

5.11.a. The assumed growth rate of the index in accordance with subdivision 5.6.i;

5.11.b. The assumed values for the participation rate, cap and spread, if applicable;
and

5.11.c. The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with subdivision 5.6.i.

5.12. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including, but not limited to, changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue Code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for will not require a revised illustration unless requested by the applicant.

§114-11E-56. Report to Contract Owners.

56.1. For annuities in the payout period with changes in that include non-guaranteed elements, and for deferred annuities in 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:

56.1.a. The beginning and end date of the current report period;

56.1.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;

56.1.c. The total amounts, if any, that have been credited, charged to the contract

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value or paid during the current report period; and

56.1.d. The amount of outstanding loans, if any, as of the end of the current report period.

§114-11E-67. Penalties.

67.1. In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this rule shall be guilty of a violation of W. Va. Code §33-11-1 et. seq.

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Appendix A. Buyer's Guide

~~{The face page of the Fixed-Deferred Annuity Buyer's Guide shall read as follows:}~~

~~Prepared by the National Association of Insurance Commissioners~~

~~The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.~~

~~This guide does not endorse any company or policy.~~

~~Reprinted by . . .~~

~~It is important that you understand the differences among various annuities so you can choose the kind that best fits your needs. This guide focuses on fixed deferred annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your producer or the company. Make sure you're satisfied with the answers before you buy.~~

~~WHAT IS AN ANNUITY?~~

~~An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.~~

~~An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.~~

~~Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefits of annuity contracts.~~

~~A deferred annuity has two parts or periods. During the accumulation period, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity. During the second period, called the payout period, the company pays income to you or to someone you choose.~~

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WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're considering and the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

This Buyer's Guide will focus on individual fixed deferred annuities.

Single Premium or Multiple Premium

You pay the insurance company only one payment for a single premium annuity. You make a series of payments for a multiple premium annuity. There are two kinds of multiple premium annuities. One kind is a flexible premium contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a scheduled premium annuity, the contract spells out your payments and how often you'll make them.

Immediate or Deferred

With an immediate annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a deferred annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

Fixed or Variable

—————•————— Fixed

During the accumulation period of a fixed deferred annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the payout period, the amount of each income payment to you is generally set when the payments start and will not change.

—————•————— Variable

During the accumulation period of a variable annuity, the insurance company puts your premiums

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(less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account):

~~HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?~~

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time. ~~Usually, what these rates will be is entirely up to the insurance company:~~

~~Current Interest Rate~~

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not change for some time period:

- ~~—————•————— The initial rate is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.~~
- ~~—————•————— The renewal rate is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.~~

~~Minimum Guaranteed Rate~~

The minimum guaranteed interest rate is the lowest rate your annuity will earn. This rate is stated in the contract.

~~Multiple Interest Rates~~

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods:

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. ~~You get only one of the accumulated values depending on which benefit you choose.~~

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WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your producer or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

Surrender or Withdrawal Charges

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a withdrawal charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a surrender charge. In either case, the company may figure the charge as a percentage of the value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a window, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a bail-out option.

In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a rolling surrender or withdrawal charge.

Some annuity contracts have a market value adjustment feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with a MVA feature may credit a higher rate than an annuity without that feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.

Free Withdrawal

Your annuity may have a limited free withdrawal feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may

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~~lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.~~

Contract Fee

~~A contract fee is a flat dollar amount charged either once or annually.~~

Transaction Fee

~~A transaction fee is a charge per premium payment or other transaction.~~

Percentage of Premium Charge

~~A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.~~

Premium Tax

~~Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.~~

~~WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?~~

Annuity Income Payments

~~One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's benefit rate in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.~~

~~There is a table of guaranteed benefit rates in each annuity contract. Most companies have current benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company~~

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generally uses the benefit rate in effect at that time to figure the amount of your income payment:

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you:

- ~~Life Only - The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependents have enough income of their own.~~
- ~~Life Annuity with Period Certain - The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This period certain is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity. Because the "period certain" is an added benefit, each income payment will be smaller than in a life-only option.~~
- ~~Joint and Survivor - The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be able to choose to have payments continue for a set length of time. Because the survivor feature is an added benefit, each income payment is smaller than in a life-only option.~~

Death Benefit

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

~~CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?~~

~~While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.~~

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~~WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?~~

~~Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.~~

~~Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.~~

~~Part of the payments you receive from an annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you withdraw the accumulation before age 59 ½. The Internal Revenue Code also has rules about distributions after the death of a contract holder.~~

~~Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.~~

~~You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.~~

~~WHAT IS A "FREE LOOK" PROVISION?~~

~~Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a free look or right to return period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.~~

~~HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?~~

~~The questions listed below may help you decide which type of annuity, if any, meets your retirement~~

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~~planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:~~

- ~~• How much retirement income will I need in addition to what I will get from Social Security and my pension?~~
- ~~• Will I need that additional income only for myself or for myself and someone else?~~
- ~~• How long can I leave my money in the annuity?~~
- ~~• When will I need income payments?~~
- ~~• Does the annuity let me get money when I need it?~~
- ~~• Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?~~
- ~~• Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?~~
- ~~• Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?~~

WHAT QUESTIONS SHOULD I ASK MY PRODUCER OR THE COMPANY?

- ~~• Is this a single premium or multiple premium contract?~~
- ~~• Is this an equity-indexed annuity?~~
- ~~• What is the initial interest rate and how long is it guaranteed?~~
- ~~• Does the initial rate include a bonus rate and how much is the bonus?~~
- ~~• What is the guaranteed minimum interest rate?~~
- ~~• What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?~~
- ~~• Are there withdrawal or surrender charges or penalties if I want to end my contract?~~

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~~early and take out all of my money? How much are they?~~

- ~~• Can I get a partial withdrawal without paying surrender or other charges or losing interest?~~
- ~~• Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?~~
- ~~• Is there a market value adjustment (MVA) provision in my annuity?~~
- ~~• What other charges, if any, may be deducted from my premium or contract value?~~
- ~~• If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change?~~
- ~~• Is there a death benefit? How is it set? Can it change?~~
- ~~• What income payment options can I choose? Once I choose a payment option, can I change it?~~

~~FINAL POINTS TO CONSIDER~~

~~Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.~~

~~Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule of charges that could mean new expenses you must pay directly or indirectly.~~

~~You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in. Be sure you understand the effect of all charges.~~

~~If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.~~

~~Remember that the quality of service that you can expect from the company and the producer is a very important factor in your decision.~~

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~~When you receive your annuity contract, **READ IT CAREFULLY!!** Ask the producer and company for an explanation of anything you don't understand. Do this before any free look period ends.~~

~~Compare information for similar contracts from several companies. Comparing products may help you make a better decision.~~

~~If you have a specific question or can't get answers you need from the producer or company, contact your state insurance department.~~

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Appendix I Equity-Indexed Annuities

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

WHAT ARE EQUITY-INDEXED ANNUITIES?

An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500), which is an equity index. The value of any index varies from day to day and is not predictable. (Note: S&P 500 is a registered trademark of the McGraw-Hill Companies, Inc., used with permission.)

When you buy an equity-indexed annuity you own an insurance contract. You are not buying shares of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest, if any, is calculated and credited. How much additional interest you get and when you get it depends on the features of your particular annuity.

Your equity-indexed annuity, like other fixed annuities, also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death benefits.

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The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases:

~~WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?~~

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula:

Indexing Method

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

Term

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

Participation Rate

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% ($9\% \times 70\% = 6.3\%$). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

Cap Rate or Cap

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~~Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.~~

Floor on Equity Index-Linked Interest

~~The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases, your fixed annuity will have a minimum guaranteed value.~~

Averaging

~~In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.~~

Interest Compounding

~~Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.~~

Margin/Spread/Administrative Fee

~~In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This percentage, sometimes referred to as the "margin," "spread," or "administrative fee," might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% ($10\% - 2.25\% = 7.75\%$). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.~~

Vesting

~~Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.~~

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HOW DO THE COMMON INDEXING METHODS DIFFER?

Annual Reset

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.

High-Water Mark

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

Low-Water Mark

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

Point-to-Point

The index-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.

WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

Generally, equity-indexed annuities offer preset combinations of features. You may have to make tradeoffs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

Features	Trade-Offs
Annual Reset	-
Since the interest earned is "locked in" annually and the index value is	Your annuity's participation rate may change each year and generally

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"reset" at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.

**High-Water Mark
Features**

Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle of the term, then drops off at the end of the term.

Low-Water Mark

Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end

will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year:

-
-
-
-
-
-

Trade-Offs

Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

-
-
-

Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive

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of the term:

index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

Point-to-Point

Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other designs:

Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end of the term.

~~WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?~~

~~Cap on Interest Earned~~

~~While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.~~

~~Averaging~~

~~Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of index-linked interest you earn when the index rises either near the start or at the end of the term.~~

~~Participation Rate~~

~~The participation rate may vary greatly from one annuity to another and from time to time within a~~

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~~particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.~~

~~Interest Compounding~~

~~It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a higher participation rate.~~

~~WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?~~

~~In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.~~

~~ARE DIVIDENDS INCLUDED IN THE INDEX?~~

~~Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.~~

~~HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?~~

~~The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:~~

~~Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?~~

~~Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?~~

~~Or, am I somewhere in between these two extremes and willing to take some risks?~~

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HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.

QUESTIONS YOU SHOULD ASK YOUR PRODUCER OR THE COMPANY

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities:

- How long is the term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?
- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?
- Can I get a partial withdrawal without paying charges or losing interest? Does my

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~~contract have vesting? If so, what is the rate of vesting?~~

Final Points to Consider

~~Remember to read your annuity contract carefully when you receive it. Ask your producer or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the producer or company, contact your state insurance department.~~

APPENDIX A. Annuity Illustration Example

Annuity Illustration Example

[The following illustration is an example only and does not reflect specific characteristics of any actual product for sale by any company]

ABC Life Insurance Company

Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)

An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy

(Contact us at Policyownerservice@ABCLife.com or 555-555-5555)

<u>Sex: Male</u>	<u>Initial Premium Payment: \$100,000.00</u>
<u>Age at Issue: 54</u>	<u>Planned Annual Premium Payments: None</u>
<u>Annuitant: John Doe</u>	<u>Tax Status: Nonqualified</u>
<u>Oldest Age at Which Annuity Payments Can Begin: 95</u>	<u>Withdrawals: None Illustrated</u>

<u>Initial Interest Guarantee Period</u>	<u>5 Years</u>
<u>Initial Guaranteed Interest Crediting Rates</u>	
<u>First Year (reflects first year only interest bonus credit of 0.75%):</u>	<u>4.15%</u>
<u>Remainder of Initial Interest Guarantee Period:</u>	<u>3.40%</u>
<u>Market Value Adjustment Period:</u>	<u>5 Years</u>
<u>Minimum Guaranteed Interest Rate after Initial Interest Guarantee Period *:</u>	<u>3%</u>

*After the Initial Interest Guarantee Period, a new interest rate will be declared annually. This rate cannot be lower than the Minimum Guaranteed Interest Rate.

Annuity Income Options and Illustrated Monthly Income Values

This annuity is designed to pay an income that is guaranteed to last as long as the Annuitant lives. When annuity income payments are to begin, the income payment amounts will be determined by applying an annuity income rate to the annuity Account Value.

Annuity income options include the following:

- Periodic payments for Annuitant's life
- Periodic payments for Annuitant's life with payments guaranteed for a certain number of years
- Periodic payments for Annuitant's life with payments continuing for the life of a survivor annuitant

Illustrated Annuity Income Option: Monthly payments for annuitant's life with payments guaranteed for 10-year period
Assumed Age When Payments Start: 70

	<u>Account Value</u>	<u>Monthly Annuity Income Rate/\$1,000 of Account Value*</u>	<u>Monthly Annuity Income</u>
<u>Based on Rates Guaranteed in the Contract</u>	<u>\$164,798</u>	<u>\$5.00</u>	<u>\$823.99</u>
<u>Based on Rates Currently Offered by the Company</u>	<u>\$171,976</u>	<u>\$6.50</u>	<u>\$1,117.84</u>

*If, at the time of annuitization, the annuity income rates currently offered by the company are higher than the annuity income rates guaranteed in the contract, the current rates will apply.

<u>Contract Year/Age</u>	<u>Premium Payment</u>	<u>Values Based on Guaranteed Rates</u>				<u>Values Based on Assumption that Initial Guaranteed Rates Continue</u>		
		<u>Interest Crediting Rate</u>	<u>Account Value</u>	<u>Case Surrender Value Before MVA</u>	<u>Minimum Cash Surrender Value After MVA</u>	<u>Interest Crediting Rate</u>	<u>Account Value</u>	<u>Cash Surrender Value Before and After MVA</u>
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>	<u>(6)</u>	<u>(7)</u>	<u>(8)</u>	<u>(9)</u>
<u>1/55</u>	<u>\$100,000</u>	<u>4.15%</u>	<u>\$104,150</u>	<u>\$95,818</u>	<u>\$92,000</u>	<u>4.15%</u>	<u>\$104,150</u>	<u>\$95,818</u>
<u>2/56</u>	<u>0</u>	<u>3.40%</u>	<u>\$107,691</u>	<u>\$100,153</u>	<u>\$93,000</u>	<u>3.40%</u>	<u>\$107,691</u>	<u>\$100,153</u>
<u>3/57</u>	<u>0</u>	<u>3.40%</u>	<u>\$111,353</u>	<u>\$104,671</u>	<u>\$95,614</u>	<u>3.40%</u>	<u>\$111,353</u>	<u>\$104,671</u>
<u>4/58</u>	<u>0</u>	<u>3.40%</u>	<u>\$115,139</u>	<u>\$109,382</u>	<u>\$98,482</u>	<u>3.40%</u>	<u>\$115,139</u>	<u>\$109,382</u>
<u>5/59</u>	<u>0</u>	<u>3.40%</u>	<u>\$119,053</u>	<u>\$114,291</u>	<u>\$114,291</u>	<u>3.40%</u>	<u>\$119,053</u>	<u>\$114,291</u>
<u>6/60</u>	<u>0</u>	<u>3.00%</u>	<u>\$122,625</u>	<u>\$118,946</u>	<u>\$118,946</u>	<u>3.40%</u>	<u>\$123,101</u>	<u>\$119,408</u>
<u>7/61</u>	<u>0</u>	<u>3.00%</u>	<u>\$126,304</u>	<u>\$123,778</u>	<u>\$123,778</u>	<u>3.40%</u>	<u>\$127,287</u>	<u>\$124,741</u>
<u>8/62</u>	<u>0</u>	<u>3.00%</u>	<u>\$130,093</u>	<u>\$130,093</u>	<u>\$130,096</u>	<u>3.40%</u>	<u>\$131,614</u>	<u>\$131,614</u>
<u>9/63</u>	<u>0</u>	<u>3.00%</u>	<u>\$133,996</u>	<u>\$133,996</u>	<u>\$133,996</u>	<u>3.40%</u>	<u>\$136,089</u>	<u>\$136,089</u>
<u>10/64</u>	<u>0</u>	<u>3.00%</u>	<u>\$138,015</u>	<u>\$138,015</u>	<u>\$138,015</u>	<u>3.40%</u>	<u>\$140,716</u>	<u>\$140,716</u>
<u>11/65</u>	<u>0</u>	<u>3.00%</u>	<u>\$142,156</u>	<u>\$142,156</u>	<u>\$142,156</u>	<u>3.40%</u>	<u>\$145,501</u>	<u>\$145,501</u>
<u>16/70</u>	<u>0</u>	<u>3.00%</u>	<u>\$164,798</u>	<u>\$164,798</u>	<u>\$164,798</u>	<u>3.40%</u>	<u>\$171,976</u>	<u>\$171,976</u>
<u>21/75</u>	<u>0</u>	<u>3.00%</u>	<u>\$191,046</u>	<u>\$191,046</u>	<u>\$191,046</u>	<u>3.40%</u>	<u>\$203,268</u>	<u>\$203,268</u>
<u>26/80</u>	<u>0</u>	<u>3.00%</u>	<u>\$221,474</u>	<u>\$221,474</u>	<u>\$221,474</u>	<u>3.40%</u>	<u>\$240,225</u>	<u>\$240,225</u>
<u>31/85</u>	<u>0</u>	<u>3.00%</u>	<u>\$256,749</u>	<u>\$256,749</u>	<u>\$256,749</u>	<u>3.40%</u>	<u>\$335,643</u>	<u>\$335,643</u>
<u>36/90</u>	<u>0</u>	<u>3.00%</u>	<u>\$297,643</u>	<u>\$297,643</u>	<u>\$297,643</u>	<u>3.40%</u>	<u>\$335,643</u>	<u>\$335,643</u>
<u>41/95</u>	<u>0</u>	<u>3.00%</u>	<u>\$345,050</u>	<u>\$345,050</u>	<u>\$345,050</u>	<u>3.40%</u>	<u>\$396,717</u>	<u>\$396,717</u>

Column Descriptions

(1) Ages shown are measured from the Annuitant's age at issue.

(2) Premium Payments are assumed to be made at the beginning of the Contract Year shown.

Values Based on Guaranteed Rates

(3) Interest Crediting Rates shown are annual rates; however, interest is credited daily. During the Initial Interest Guarantee Period, values developed from the Initial Premium Payment are illustrated using the Initial Guaranteed Interest Rate(s) declared by the insurance company, which include an additional first year only interest bonus credit of 0.75%. The interest rates will be guaranteed for the Initial Interest Guarantee Period, subject to an MVA. After the Initial Interest Guaranteed Period, a new renewal interest rate will be declared annually, but can never be less than the Minimum Guaranteed Interest Rate shown.

(4) Account Value is the amount you have at the end of each year if you leave your money in the contract until you start receiving annuity payments. It is also the amount available upon the Annuitant's death if it occurs before annuity payments begin. The death benefit is not affected by surrender charges or the MVA.

(5) Cash Surrender Value Before MVA is the amount available at the end of each year if you surrender the contract (after deduction of any Surrender Charge) but before the application of any MVA. Surrender charges are applied to the Account Value according to the schedule below until the surrender charge period ends, which may be after the Initial Interest Guarantee Period has ended.

<u>Years Measured from Premium Payment:</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8+</u>
<u>Surrender Charge:</u>	<u>8%</u>	<u>7%</u>	<u>6%</u>	<u>5%</u>	<u>4%</u>	<u>3%</u>	<u>2%</u>	<u>0%</u>

(6) Minimum Cash Surrender Value After MVA is the minimum amount available at the end of each year if you surrender your contract before the end of five years, no matter what the MVA is. The minimum is set by law. The amount you receive may be higher or lower than the cash surrender value due to the application of the MVA, but never lower than this minimum. Otherwise the MVA works as follows: If the interest rate available on new contracts offered by the company is LOWER than your Initial Guaranteed Interest Rate, the MVA will INCREASE the amount you receive. If the interest rate available on new contracts offered by the company is HIGHER than your Initial Guaranteed Interest Rate, the MVA will DECREASE the amount you receive.

Values Based on Assumption that Initial Guaranteed Rates Continue

(7) Interest Crediting Rates are the same as in Column (3) for the Initial Interest Guarantee Period. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually. For the purposes of calculating the values in this column, it is assumed that the Initial Guaranteed Interest Rate (without the bonus) will continue as the new renewal interest rate in all years. The actual renewal interest rates are not subject to an MVA and will very likely NOT be the same as the illustrated renewal interest rates.

(8) Account Value is calculated the same way as Column (4).

(9) Cash Surrender Value Before and After MVA is the Cash Surrender Value at the end of each year assuming that Initial Guaranteed Interest Rates continue and that the continuing rates are the rates offered by the company on new contracts. In this case, the MVA would be zero and Cash Surrender Values before and after the MVA would be the same.

Important Note: This illustration assumes you will take no withdrawals from your annuity before you begin to

receive periodic income payments. **Withdrawals will reduce both the annuity Account Value and the Cash Surrender Value.** You may make withdrawals of up to 10% of your account value each contract year without paying surrender charges. Excess withdrawals (above 10%) and full withdrawals will be subject to surrender charges.

This illustration assumes the annuity's current interest crediting rates will not change. It is likely that they will change and actual values may be higher or lower than those in the illustration.

The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. For more information, read the annuity disclosure and annuity buyer's guide.

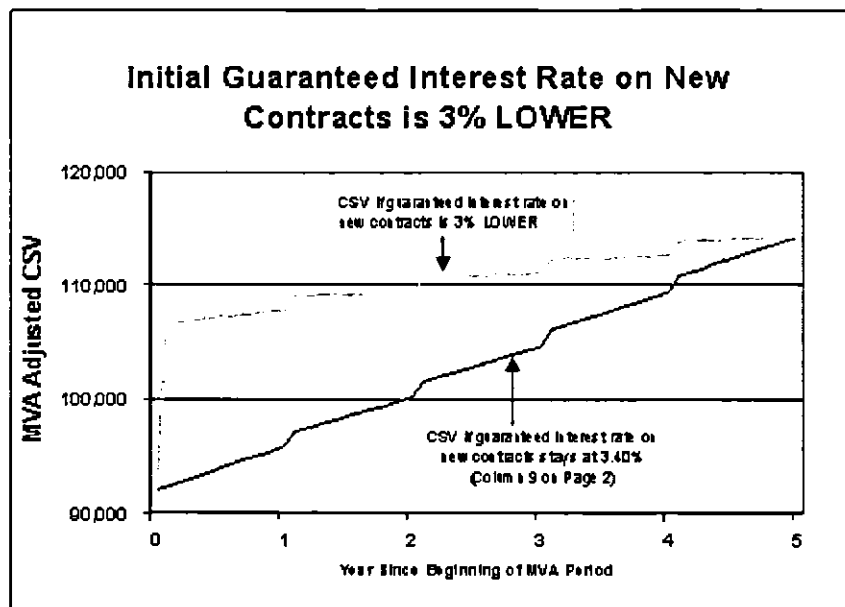
MVA-adjusted Cash Surrender Values (CSVs) Under Sample Scenarios

The graphs below shows MVA-adjusted Cash Surrender Values (CSVs) During the first five years of the contract, as illustrated above (\$100,000 single premium, a 5-year MVA Period), under two same scenarios, as described below.

Graph #1 shows if the interest rate on the new contracts is 3% LOWER than your Initial Guaranteed Interest Rate, the MVA will increase the amount you receive. The other line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) above).

Graph #2 shows if the interest rate on new contracts is 3% HIGHER than your Initial Guaranteed Interest Rate, the MVA will decrease the amount you receive, but not below the minimum set by law (Column (6) above), which in this scenario limits the decrease for the first 2 years. The other line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) above).

These graphs and the same guaranteed interest rates on new contracts used are for demonstration purposes only and are not intended to be a projection of how guaranteed interest rates on new contracts are likely to behave.



Initial Guaranteed Interest Rate on New Contracts is 3% HIGHER

