MODIFIED GUARANTEED ANNUITY MODEL REGULATION

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Section 1. Purpose

The purpose of this regulation is to provide rules for a modified guaranteed annuity, a variable annuity whose assets are placed in a separate account.

Section 2. Authority

This rule is issued pursuant to the authority vested in the Commissioner of Insurance of the State of [insert state] under [insert cite to state's separate account law]. This rule will take effect on [insert date].

Section 3. Applicability and Scope

This regulation shall apply to:

A. The qualifications of agents who sell modified guaranteed annuity contracts in this state;

B. The qualification of insurers who issue these contracts;

C. The required contract form and provisions for issue of this coverage in this state; and

D. The manner in which separate account assets, supporting these issued contracts, are to be maintained and reported.

Section 4. Definitions

As used in this regulation, the following terms and phrases shall mean:

A. "Modified guaranteed annuity" means a deferred annuity contract, the underlying assets of which are held in a separate account, and the values of which are guaranteed if held for specified periods. The contract contains nonforfeiture values that are based upon a market-value adjustment formula if held for shorter periods.

This formula may or may not reflect the value of assets held in the separate account. The assets underlying the contract shall be in a separate account during the period or periods when the contract holder can surrender the contract.

B. "Interest credits" means all interest that is credited to the contract.

C. "Separate account" means a separate account established pursuant to Section [insert section], or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

D. “Commissioner” means the Insurance Commissioner of [insert state].

Section 5. Authority of Insurers

The following requirements apply to all insurers either seeking or having authority to issue modified guaranteed annuities in this state.

A. Licensing and Approval to do Business.

(1) No company shall deliver or issue for delivery modified guaranteed annuities within this state unless it is licensed or organized to do life insurance or annuity business in this state. The commissioner must be satisfied that its condition or method of operation in connection with the issuance of these contracts will not render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things, the history and financial condition of the company; the character, responsibility and fitness of the officers and directors of the company; and the law and regulation under which the company is authorized in the state of domicile to issue these annuities.

(2) If the company is a subsidiary of an admitted life insurance company, or affiliated with such a company by common management or ownership, it may be deemed by the commissioner to have satisfied the provision of Paragraph (1) if either the subsidiary or the admitted life company satisfies the provisions of Paragraph (1). Companies licensed and having a satisfactory record of doing business in this state for a period of at least three (3) years may be deemed to have satisfied the commissioner with respect to Paragraph (1) above.

(3) Before a company shall deliver or issue for delivery modified guaranteed annuities within this state, it shall submit to the commissioner a general description of the kinds of annuities it intends to issue. If requested by the commissioner, the following shall be submitted:

(a) A copy of the statutes and regulations of its state of domicile under which it is authorized to issue modified guaranteed annuities; and

(b) Biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

B. Use of Sales Materials.

(1) An insurer authorized to sell modified guaranteed annuities in this state shall not use any sales material, advertising material or descriptive literature or other materials of any kind in connection with the sale of modified guaranteed annuities in this state that is false, misleading, deceptive or inaccurate.

(2) Illustrations of benefits payable under a modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience; except that hypothetical assumed interest credits may be used to illustrate possible levels of benefits.

(3) Before an insurer shall deliver or issue for delivery a modified guaranteed annuity contract in this state, the commissioner may require the filing of a copy of any prospectus or other sales material to be used in connection with the marketing of the insurer’s modified guaranteed annuity contract. The sales material shall clearly illustrate that there can be both upward and downward adjustments due to the application of the market value adjustment formula in determining nonforfeiture benefits.

C. Reports. An insurer authorized to transact the business of modified guaranteed annuities in this state shall submit to the commissioner:

(1) A separate account annual statement, which shall include the business of its modified guaranteed annuities; and

(2) Such additional information concerning its modified guaranteed annuity operations or separate accounts as the commissioner shall deem necessary.

D. Authority of Commissioner to Disapprove.

Any material required to be filed with and approved by the commissioner shall be subject to disapproval if at any time it is found by the commissioner not to comply with the standards established by this regulation.

Section 6. Filing of Contracts

The filing requirements applicable to modified guaranteed annuities shall be those filing requirements otherwise applicable under existing statutes and regulations of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Filings shall include a demonstration in a form satisfactory to the commissioner that the nonforfeiture provisions of the contracts comply with Section 7B of this regulation, as well as a certification by a member of the American Academy of Actuaries as to the compliance with Section 7B.

Section 7. Modified Guaranteed Annuity Contract Requirements

A. Mandatory Contract Benefit and Design Requirements.

(1) A modified guaranteed annuity contract delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of nonforfeiture benefits.

(2) A modified guaranteed annuity contract calling for the payment of periodic stipulated payments shall not be delivered or issued for delivery in this state unless it contains in substance the following provisions:

(a) A provision that there shall be a grace period of thirty (30) days or one month during which the contract shall remain in force and, within which any payment due to the insurer other than the first may be made. The contract may include a statement of the basis for determining the date as of which any such payment received during the grace period shall be applied to produce the values under the contract.

(b) A provision that, at any time within one year from the date of default, the contract may be reinstated upon payment to the insurer of such overdue payments as required by the contract, and of all indebtedness to the insurer on the contract, including interest. Reinstatement may not occur if the cash value has been paid. The contract may include a statement of the basis for determining the date as of which the amount to cover the overdue payments and indebtedness shall be applied to produce the values under the contract.

(c) A provision that, to the extent set out in the contract, the portion of the assets of any separate account that equal the reserves and other contract liabilities of the account shall not be chargeable with liabilities arising out of any other business of the company.

(3) The market-value adjustment formula, used in determining nonforfeiture benefits, shall be stated in the contract and shall be applicable for both upward and downward adjustments. When a contract is filed, it shall be accompanied by an actuarial statement indicating the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the insurance company.

Drafting Note: To achieve effective insulation of certain assets held in separate accounts from claims of general creditors it is probably necessary, as a matter of general corporate law, that the insulation be specifically authorized by statute.

B. Nonforfeiture Benefits.

(1) This section shall not apply to any of the following:

(a) Reinsurance;

(b) Group annuity contracts purchased in connection with one or more retirement plans or deferred compensation plans established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code;

(c) Premium deposit fund;

(d) Investment annuity;

(e) Immediate annuity;

(f) Deferred annuity contract after annuity payments have commenced;

(g) Reversionary annuity; or

(h) Any contract which is to be delivered outside this state by an agent or other representative of the company issuing the contract.

(2) A modified guaranteed annuity contract shall not be delivered or issued for delivery in this state unless it contains in substance the following provisions:

(a) When premium payments cease under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with Paragraph (7) of this subsection. The provision will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(b) If a contract provides for a lump sum settlement at maturity or at any other time, upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay, in lieu of a paid-up annuity benefit, a cash surrender benefit as described in the contract that complies with Paragraph (8) of this subsection. The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six (6) months after demand therefore with surrender of the contract after making written request and receiving written approval of the commissioner.The request shall address the necessity and equitability to all policyholders of the deferral.

(3) The minimum values, as specified in this section, of any paid-up annuity, cash surrender or death benefits available under a modified guaranteed annuity contract shall be based upon nonforfeiture amounts meeting the requirements of this paragraph. The unadjusted minimum nonforfeiture amount on any date prior to the annuity commencement date shall be an amount equal to the net considerations (as specified in Paragraph (6) of this subsection) increased by the interest credits defined in Section 4 allocated to the net considerations, which amount shall be reduced to reflect the effect of Subparagraphs (a), (b), (c), and (d) below:

(a) Any prior withdrawls from or partial surrenders of the contract increased by the interest credits defined in Section 4;

(b) An annual contract charge of $50, increased by the interest credits defined in Section 4;

(c) Any premium tax paid by the company for the contract, increased by the interest credits defined in section 4; and

Drafting Note: The premium tax credit is only permitted if the tax is actually paid by the company. If the tax is paid and subsequently credited back to the company, such as upon early termination of the contract, the tax credit may not be taken.

(d) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(4) Guaranteed interest credits in each year for any period of time for which interest credits are guaranteed shall be reasonably related to the average guaranteed interest credits over that period of time.

Drafting Note: The requirement that guaranteed interest credits be reasonably related to their average over any period is intended to preclude the use of patterns of interest credits that are not based on economic reality in order to manipulate unadjusted minimum nonforfeiture amounts.

(5) The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract.

(6) The net considerations for a given contract year used to define the minimum nonforfeiture amount in Paragraph (3) shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year.

(7) Any paid-up annuity benefit available under a modified guaranteed annuity contract shall be such that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

(8) For modified guaranteed annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the insurer. The death benefit under these contracts shall be at least equal to the cash surrender benefit.

(9) Any modified guaranteed annuity contract which does not provide cash surrender benefits, or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the annuity commencement date shall include a statement in a prominent place in the contract that these benefits are not provided.

(10) Despite the requirements of this section, a modified guaranteed annuity contract may provide under the situations specified in Subparagraph (a) or (b) below that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount, and by this payment be released of any further obligation under the contract:

(a) If, at the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000, or would provide an income the initial amount of which is less than $20 per month; or

(b) If, prior to the time the annuity becomes payable under a periodic payment contract, no considerations have been received under the contract for a period of two (2) full years and both the total considerations paid prior to that period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforteiture amount is less than $2,000.

(11) For any modified guaranteed annuity contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Despite the provisions of Paragraph (2) of this subsection, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all these additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of these additional benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

Drafting Note: This regulation is not intended to prevent the application of variable annuity regulations or the individual nonforfeiture laws if and to the extent that modified guaranteed annuity benefits are combined in the same contract with (1) variable annuity benefits that vary directly with the value of the assets in the separate account, and (2) traditional fixed annuity benefits, or (3) life insurance benefits.

C. The Application. The application for a modified guaranteed annuity shall prominently set forth language substantially stating that amounts payable under the contract are subject to a market value adjustment prior to a date or dates specified in the contract. The statement shall be placed immediately above the signature line.

Section 8. Reserve Liabilities

A. Reserve liabilities for modified guaranteed annuities shall be established in accordance with actuarial procedures that recognize:

(1) That assets of the separate account are based on market values;

(2) The variable nature of benefits provided; and

(3) Any mortality guarantees.

B. As a minimum, the separate account liability will equal the surrender value based upon the market value adjustment formula contained in the contract. If that liability is greater than the market value of the assets, a transfer of assets will be made into the separate account so that the market value of the assets at least equals that of the liabilities. Also, any additional reserve that is needed to cover future guaranteed benefits will also be set up by the valuation actuary.

C. The market value adjustment formula, the interest guarantees and the degree to which projected cash flow of assets and liabilities are matched must also be considered. Each year, the valuation actuary shall provide an opinion on whether the assets in the separate account are adequate to provide all future benefits that are guaranteed.

Section 9. Separate Accounts

The following requirements apply to the establishment and administration of modified guaranteed annuity separate accounts by a domestic insurer:

A. Establishment and Administration of Separate Accounts. A domestic insurer issuing modified guaranteed annuities shall establish one or more separate accounts pursuant to Section [insert section providing for separate accounts].

B. Amounts in the Separate Account. The insurer shall maintain in each separate account assets with a market or other value comporting to standards set out in Section [insert section] at least equal to the valuation reserves and other contract liabilities respecting such account.

C. Valuation of Separate Account Assets. Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value, or pursuant to standards contained in Section [insert section].

D. Investment Laws. Unless otherwise approved by the commissioner, separate accounts relating to modified guaranteed annuities will be subject to investment laws applicable to the insurer's general asset account.

Section 10. Reports to Policyholders

A company shall annually provide its contractholders with a report showing both the account value and the cash surrender value. The report should clearly indicate that the account value is prior to the application of any surrender charges or market value adjustment formula. It should also specify the surrender charge and market value adjustment used to determine the cash surrender value.

Section 11. Foreign Companies

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public that is substantially similar to that provided by these regulations, the commissioner may consider compliance with the law or regulation as compliance with this rule to the extent deemed appropriate by him or her.

Section 12. Authorization of Agents

A person, corporation, partnership, or other legal entity may not sell or offer for sale in this state any modified guaranteed annuity contract unless licensed to sell variable annuities under the insurance laws of this state.

Section 13. Separability

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

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1985 Proc. II 11, 23, 552, 556-561, 607 (adopted).
1990 Proc. II 7, 15-16, 565, 582, 897 (amended and reprinted).
2006 Proc. 1st Quarter 36, 39-43 (amended).