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RULE AND REGULATION NO. 59
MODIFIED GUARANTEED ANNUITIES

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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 Insurance Commissioner of the State of Arkansas under A.C.A. §§23-61-108 and 23-81-405, and §§25-15-201, et seq. This Rule will take effect on March 1, 1994.

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 such contracts;

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

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

Section 4. Definitions

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

A. A "Modified Guaranteed Annuity" is 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. It contains nonforfeiture values that are based upon a market-value adjustment formula if held for shorter periods. The assets underlying the contract must 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 A.C.A. §23-81-402, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer authorized to sell variable products in this State.

D. "Commissioner" means the Insurance Commissioner of the State of Arkansas.

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 insurer shall deliver or issue for delivery modified guaranteed annuities within this state unless it is licensed or organized or to do life insurance or annuity business in this State, and, further, authorized to deliver or issue for delivery variable contracts. The Commissioner must be satisfied that its condition or method of operation in connection with the issuance of such 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 insurer; the character, responsibility and fitness of the officers and directors of the insurer; and the law and regulation under which the company is authorized in the state of domicile to issue such annuities.

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

(3) Before any insurer 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. The following shall be submitted:

(a) A copy of the current 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 insurer 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 which is false, misleading, deceptive or inaccurate.

(2) Illustrations of benefits payable under any modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience; except that assumed interest credits that are clearly identified as <u>assumed</u> or <u>hypothetical</u> may be used to illustrate possible levels of benefits.

(3) Before any insurer shall deliver or issue for delivery any modified guaranteed annuity contract in this State, such insurer shall file 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 must 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.

Any 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 contract(s) comply with Section 7 (B) of this regulation.

Section 7. Modified Guaranteed Annuity Contract Requirements

A. Mandatory Contract Benefit and Design Requirements.

(1) Any 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) No modified guaranteed annuity contract calling for the payment of periodic stipulated payments shall 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 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 such overdue payments and indebtedness shall be applied to produce the values under the contract.

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

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, as now or hereafter amended;

(c) Premium deposit fund;

(d) Immediate annuity;

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

(f) Reversionary annuity; or

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

(2) No modified guaranteed annuity contract shall 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 (5) below. 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 any paid-up annuity benefit, a cash surrender benefit as described in the contract that complies with Paragraph (6) below. The contract may provide that the insurer may defer payment of such cash surrender benefit for a period of six (6) months after demand.

(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 percentages of net considerations (as specified in Paragraph (4) below) increased by the interest credits defined in Section 4 allocated to the percentage of net considerations, which amount shall be reduced to reflect the effect of Subparagraphs (a), (b), (c), and (d) below:

(a) Any partial withdrawals from or partial surrender of the contract;

(b) The amount of any indebtedness on the contract, including interest due and accrued;

(c) An annual contract charge not less than zero and equal to (a) the lesser of thirty dollars ($30.00) and 2% of the end of year contract value less (b) the amount of any annual contract charge deducted from any gross considerations credited to the contract during such contract year; and

(d) A transaction charge of ten dollars ($10.00) for each transfer to another investment division within the same contract.

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.

The Minimum Norforfeiture Amount shall be the Unadjusted Minimum Nonforfeiture Amount adjusted by the market-value adjustment formula contained in the contract.

The annual contract charge of thirty dollars ($30.00) and the transaction charge of ten dollars ($10.00) referenced will be adjusted to reflect changes in the Consumer Price Index in accordance with paragraph (4) below.

(4) The percentage of net considerations used to define the Minimum Nonforfeiture Amount in Paragraph (3) above shall meet the requirements of this paragraph.

(a) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the Minimum Nonforfeiture Amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during the contract year less an annual contract charge of thirty dollars ($30.00) and less a collection charge of one dollar and twenty-five cents ($1.25) per consideration credited to the contract during the contract year and less any charges for premium taxes. The percentages of net considerations shall be sixty-five percent (65%) for the first contract year and eighty-seven and one-half percent (87 1/2%) for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five (65%).

(b) With respect to contracts providing for a single consideration, the net consideration used to define the minimum Nonforfeiture Amount shall be the gross consideration less a contract charge of seventy-five dollars ($75.00) and less any charge for premium taxes. The percentage of the net consideration shall be ninety percent (90%).

The annual contract charge of thirty dollars ($30.00), the collection charge of one dollar and seventy-five cents ($1.75) per collection, and the single consideration contract charge of seventy-five dollars ($75.00) referred to above, will be adjusted to reflect changes in the Consumer Price Index in accordance with Paragraph (c) below:

(c) The above contract charges shall be multiplied by the ratio of (a) the Consumer Price Index for June of the calendar year preceding the date of filing, to (b) the Consumer Price Index for June, 1979. As used herein, the Consumer Price Index means such Index for all urban consumers for all items as published by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency. If publication of the Consumer Price Index ceases, or if such Index otherwise becomes unavailable or is altered in such a way as to be unusable, the Commissioner will substitute an index the Commissioner deems suitable.

(5) 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. Such present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

(6) For modified guaranteed annuity contracts which 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 such contracts shall be at least equal to the cash surrender benefit.

(7) 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 such benefits are not provided.

(8) Notwithstanding the requirements of this Section, a modified guaranteed annuity contract may provide under the situations specified in Subparagraphs (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 such 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:

(i) The total considerations paid prior to such period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and

(ii) The larger of the Unadjusted Minimum Nonforfeiture Amount and the Minimum Nonforfeiture Amount is less than $2,000.

(9) 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) above, additional benefits payable

(a) In the event of total and permanent disability,
(b) As reversionary annuity or deferred reversionary annuity benefits, or
(c) As other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such 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 such 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.

C. The Application.

An application used 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 on the application, and the application shall be made a part of the policy.

Section 8. Reserve Liabilities

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

A. The assets of the separate account are based on market values;
B. The variable nature of benefits provided; and
C. Any mortality guarantees.

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.

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 must 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 any domestic insurer:

A. Establishment and Administration of Separate Accounts.

Any domestic insurer issuing modified guaranteed annuities shall establish one or more separate accounts pursuant to A.C.A. §23-81-402.

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 A.C.A. §23-81--402(4) 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 pursuant to standards contained in A.C.A. §23-81-402(4).

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, and A.C.A. §23-81-402(2) shall not apply.

Section 10. Reports to Policyholders

Companies will annually provide their contract holders with a report showing both the account value and the cash surrender value. The report shall 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 which is substantially similar to that provided by these Regulations, the Commissioner to the extent deemed appropriate may consider compliance with such law or regulation as compliance with this Rule.

Section 12. Authorization of Agents

No person, corporation, partnership, or other legal entity may 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. Severability

If any provision of this Regulation or the application thereof 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.

[Lee Douglass' signature]
LEE DOUGLASS
INSURANCE COMMISSIONER
STATE OF ARKANSAS

[dated 2-24-94]
DATE