

ARKANSAS REGISTER

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AR. REGISTER DIV.

Transmittal Sheet

9: FEB 28 PM 2: 54



W.J. "BILL" McCUEN
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

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Secretary of State
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Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date 3/1/94 Code Number 054.00.94--001

Name of Agency Arkansas Insurance Department

Department Legal Division

Contact Person Donald K. Switzer

A.C.A. §§23-61-108 and 23-81-405, and

Statutory Authority for Promulgating Rules §§25-15-201 et seq.

Intended Effective Date

Oct. 11, 12; Oct. 18, 1993

Emergency

Legal Notice Published Oct. 23, 26, 1993

20 Days After Filing

Final Date for Public Comment 12/3/1993

Other

Filed With Legislative Council 10/4/1993

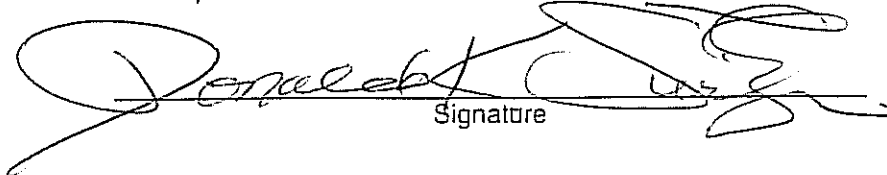
March 1, 1994

Reviewed by Legislative Council 11/4/1993

Adopted by State Agency 3/1/1994

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.


Signature

Assistant Insurance Commissioner

Title

February 28, 1994

Date

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AR. REGISTER DIV.

1
2 94 FEB 28 PM 2:54 RULE AND REGULATION NO. 59
MODIFIED GUARANTEED ANNUITIES

3 W.J. "BILL" McCUEN
SECRETARY OF STATE
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17 Section 1. Purpose

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

21 Section 2. Authority

22 This rule is issued pursuant to the authority vested in the Insurance
23 Commissioner of the State of Arkansas under A.C.A. §§23-61-108 and
24 23-81-405, and §§25-15-201, et seq. This Rule will take effect on March
25 1, 1994.

26 Section 3. Applicability and Scope

27 This Regulation shall apply to:

- 28 A. The qualifications of agents who sell modified guaranteed
- 29 annuity contracts in this State;
- 30 B. The qualification of insurers who issue such contracts;
- 31 C. The required contract form and provisions for issue of such
- 32 coverage in this State; and
- 33 D. The manner in which separate account assets, supporting such
- 34 issued contracts, are to be maintained and reported.

35 Section 4. Definitions

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

- 37 A. A "Modified Guaranteed Annuity" is a deferred annuity contract,
- 38 the underlying assets of which are held in a separate account,
- 39 and the values of which are guaranteed if held for specified
- 40 periods. It contains nonforfeiture values that are based upon a
- 41 market-value adjustment formula if held for shorter periods.
- 42 The assets underlying the contract must be in a separate account

- 1 during the period or periods when the contract holder can
2 surrender the contract.
- 3 B. "Interest Credits" means all interest that is credited to the
4 contract.
- 5 C. "Separate Account" means a separate account established pursuant
6 to A.C.A. §23-81-402, or pursuant to the corresponding section
7 of the insurance laws of the state of domicile of a foreign or
8 alien insurer authorized to sell variable products in this
9 State.
- 10 D. "Commissioner" means the Insurance Commissioner of the State of
11 Arkansas.

12 Section 5. Authority of Insurers

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

- 15 A. Licensing and Approval to do Business.
- 16 (1) No insurer shall deliver or issue for delivery modified
17 guaranteed annuities within this state unless it is
18 licensed or organized or to do life insurance or annuity
19 business in this State, and, further, authorized to
20 deliver or issue for delivery variable contracts. The
21 Commissioner must be satisfied that its condition or
22 method of operation in connection with the issuance of
23 such contracts will not render its operation hazardous to
24 the public or its policyholders in this state. The
25 Commissioner shall consider among other things the history
26 and financial condition of the insurer; the character,
27 responsibility and fitness of the officers and directors
28 of the insurer; and the law and regulation under which the
29 company is authorized in the state of domicile to issue
30 such annuities.
- 31 (2) If the insurer is a subsidiary of an admitted life
32 insurance company, or affiliated with such insurer by
33 common management or ownership, it may, in the reasonable
34 discretion of the commissioner, be deemed by him to have
35 satisfied the provision of Paragraph (1) if either the
36 subsidiary or the admitted life company satisfies the
37 provisions of Paragraph (1). Insurers licensed and having
38 a satisfactory record of doing business in this state for
39 a period of at least three (3) years, and which also
40 possess variable contract authority, may be deemed to
41 have satisfied the Commissioner with respect to Paragraph
42 (1) above.
- 43 (3) Before any insurer shall deliver or issue for delivery
44 modified guaranteed annuities within this state, it shall
45 submit to the Commissioner a general description of the
46 kinds of annuities it intends to issue. The following
47 shall be submitted:
- 48 (a) A copy of the current statutes and regulations of
49 its state of domicile under which it is authorized
50 to issue modified guaranteed annuities; and

1 (b) Biographical data with respect to officers and
2 directors of the insurer on the NAIC uniform
3 biographical data forms.

4 B. Use of Sales Materials.

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

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

18 (3) Before any insurer shall deliver or issue for delivery any
19 modified guaranteed annuity contract in this State, such
20 insurer shall file a copy of any prospectus or other sales
21 material to be used in connection with the marketing of
22 the insurer's modified guaranteed annuity contract. The
23 sales material must clearly illustrate that there can be
24 both upward and downward adjustments due to the
25 application of the market-value adjustment formula in
26 determining nonforfeiture benefits.

27 C. Reports.

28 Any insurer authorized to transact the business of modified
29 guaranteed annuities in this State shall submit to the
30 Commissioner:

31 (1) A Separate account annual statement which shall include
32 the business of its modified guaranteed annuities; and

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

36 D. Authority of Commissioner to Disapprove.

37 Any material required to be filed with and approved by the
38 Commissioner shall be subject to disapproval if at any time it
39 is found by the Commissioner not to comply with the standards
40 established by this Regulation.

41 Section 6. Filing of Contracts

42 The filing requirements applicable to modified guaranteed annuities shall
43 be those filing requirements otherwise applicable under existing statutes
44 and regulations of this State with respect to individual and group life
45 insurance and annuity contract form filings, to the extent appropriate.
46 Filings shall include a demonstration in a form satisfactory to the
47 Commissioner that the nonforfeiture provisions of the contract(s) comply
48 with Section 7 (B) of this regulation.

1 Section 7. Modified Guaranteed Annuity Contract Requirements

2 A. Mandatory Contract Benefit and Design Requirements.

3 (1) Any modified guaranteed annuity contract delivered or
4 issued for delivery in this State shall contain a
5 statement of the essential features of the procedures to
6 be followed by the insurance company in determining the
7 dollar amount of nonforfeiture benefits.

8 (2) No modified guaranteed annuity contract calling for the
9 payment of periodic stipulated payments shall be delivered
10 or issued for delivery in this State unless it contains in
11 substance the following provisions:

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

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

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

41 B. Nonforfeiture Benefits.

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

43 (a) Reinsurance;

44 (b) Group annuity contracts purchased in connection
45 with one or more retirement plans or deferred
46 compensation plans established or maintained by or
47 for one or more employers (including partnerships
48 or sole proprietorships), employee organizations,
49 or any combination thereof, other than plans
50 providing individual retirement accounts or
51 individual retirement annuities under Section 408

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- 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

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

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

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

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

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

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

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

1 The annual contract charge of thirty dollars
2 (\$30.00), the collection charge of one dollar and
3 seventy-five cents (\$1.75) per collection, and the
4 single consideration contract charge of
5 seventy-five dollars (\$75.00) referred to above,
6 will be adjusted to reflect changes in the Consumer
7 Price Index in accordance with Paragraph (c) below:

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

21 (5) Any paid-up annuity benefit available under a modified
22 guaranteed annuity contract shall be such that its present
23 value on the annuity commencement date is at least equal
24 to the Minimum Nonforfeiture Amount on that date. Such
25 present value shall be computed using the mortality table,
26 if any, and the guaranteed or assumed interest rates used
27 in calculating the annuity payments.

28 (6) For modified guaranteed annuity contracts which provide
29 cash surrender benefits, the cash surrender benefit at any
30 time prior to the annuity commencement date shall not be
31 less than the Minimum Nonforfeiture Amount next computed
32 after the request for surrender is received by the
33 insurer. The death benefit under such contracts shall be
34 at least equal to the cash surrender benefit.

35 (7) Any modified guaranteed annuity contract which does not
36 provide cash surrender benefits, or does not provide death
37 benefits at least equal to the Minimum Nonforfeiture
38 Amount prior to the annuity commencement date shall
39 include a statement in a prominent place in the contract
40 that such benefits are not provided.

41 (8) Notwithstanding the requirements of this Section, a
42 modified guaranteed annuity contract may provide under the
43 situations specified in Subparagraphs (a) or (b) below
44 that the insurer, at its option, may cancel the annuity
45 and pay the contract holder the larger of the Unadjusted
46 Minimum Nonforfeiture Amount and the Minimum Nonforfeiture
47 Amount, and by such payment be released of any further
48 obligation under the contract:

1 (a) If at the time the annuity becomes payable, the
2 larger of the Unadjusted Minimum Nonforfeiture
3 Amount and the Minimum Nonforfeiture Amount is less
4 than \$2,000, or would provide an income the initial
5 amount of which is less than \$20 per month; or
6 (b) If prior to the time the annuity becomes payable
7 under a periodic payment contract no considerations
8 have been received under the contract for a period
9 of two (2) full years and both:

10 (i) The total considerations paid prior to such
11 period, reduced to reflect any partial
12 withdrawals from or partial surrenders of the
13 contract, and
14 (ii) The larger of the Unadjusted Minimum
15 Nonforfeiture Amount and the Minimum
16 Nonforfeiture Amount is less than \$2,000.

17 (9) For any modified guaranteed annuity contract which
18 provides, within the same contract by rider or
19 supplemental contract provision, both annuity benefits and
20 life insurance benefits that are in excess of the greater
21 of cash surrender benefits or a return of the gross
22 considerations with interest, the minimum nonforfeiture
23 benefits shall be equal to the sum of the minimum
24 nonforfeiture benefits for the annuity portion and the
25 minimum nonforfeiture benefits, if any, for the life
26 insurance portion computed as if each portion were a
27 separate contract. Despite the provisions of Paragraph
28 (2) above, additional benefits payable

29 (a) In the event of total and permanent disability,
30 (b) As reversionary annuity or deferred reversionary
31 annuity benefits, or
32 (c) As other policy benefits additional to life
33 insurance, endowment, and annuity benefits, and
34 considerations for all such additional benefits,
35 shall be disregarded in ascertaining the minimum
36 nonforfeiture amounts, paid-up annuity, cash
37 surrender and death benefits that may be required
38 by this section. The inclusion of such additional
39 benefits shall not be required in any paid-up
40 benefits, unless the additional benefits separately
41 would require Minimum Nonforfeiture Amounts,
42 paid-up annuity, cash surrender and death benefits.

43 C. The Application.

44 An application used for a modified guaranteed annuity shall
45 prominently set forth language substantially stating that
46 amounts payable under the contract are subject to a market value
47 adjustment prior to a date or dates specified in the contract.

1 The statement shall be placed immediately above the signature
2 line on the application, and the application shall be made a
3 part of the policy.

4 Section 8. Reserve Liabilities

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

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

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

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

23 Section 9. Separate Accounts

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

- 26 A. Establishment and Administration of Separate Accounts.
27 Any domestic insurer issuing modified guaranteed annuities
28 shall establish one or more separate accounts pursuant to
29 A.C.A. § 23-81-402.
- 30 B. Amounts in the Separate Account.
31 The insurer shall maintain in each separate account assets
32 with a market or other value comporting to standards set out
33 in A.C.A. § 23-81-402(4) at least equal to the valuation
34 reserves and other contract liabilities respecting such
35 account.
- 36 C. Valuation of Separate Account Assets.
37 Investments of the separate account shall be valued at their
38 market value on the date of valuation or pursuant to
39 standards contained in A.C.A. § 23-81-402(4).
- 40 D. Investment Laws.
41 Unless otherwise approved by the Commissioner, separate
42 accounts relating to modified guaranteed annuities will be
43 subject to investment laws applicable to the insurer's
44 general asset account, and A.C.A. § 23-81-402(2) shall not
45 apply.

1 Section 10. Reports to Policyholders

2 Companies will annually provide their contract holders with a report
3 showing both the account value and the cash surrender value. The report
4 shall clearly indicate that the account value is prior to the application
5 of any surrender charges or market-value adjustment formula. It should
6 also specify the surrender charge and market value adjustment used to
7 determine the cash surrender value.

8 Section 11. Foreign Companies

9 If the law or regulation in the place of domicile of a foreign company
10 provides a degree of protection to the policyholders and the public which
11 is substantially similar to that provided by these Regulations, the
12 Commissioner to the extent deemed appropriate may consider compliance
13 with such law or regulation as compliance with this Rule.

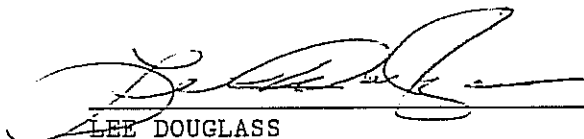
14 Section 12. Authorization of Agents

15 No person, corporation, partnership, or other legal entity may sell or
16 offer for sale in this State any modified guaranteed annuity contract
17 unless licensed to sell variable annuities under the insurance laws of
18 this State.

19 Section 13. Severability

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

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LEE DOUGLASS
INSURANCE COMMISSIONER
STATE OF ARKANSAS

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DATE