

South Carolina Department of Insurance Annuity Filing Checklist



South Carolina Department of Insurance
1201 Main Street, Suite 1000
Columbia, South Carolina 29201
803-737-6230—Phone
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This checklist is intended to be used as a tool by the insurer to properly prepare and submit filings with the South Carolina Department of Insurance. Please use the ***South Carolina Life, Accident and Health Type of Insurance Matrix***, which is located at <http://doi.sc.gov/company/ratesrulesandforms>.

Please know that improper and/or incomplete filings will result in an automatic disapproval. Filings submitted that are not in compliance with all of the requirements will also result in an automatic disapproval.

Please contact the Rates, Rules and Forms Filings Office directly at 803-737-6230 if you have questions regarding annuity filings. Please do not contact an employee referenced in the attached bulletin(s) as they may no longer be with the Department or their position within the Department may have changed.

Line Code	DOI Series	Line of Business Description	Type of Filing	How Filing Handled
75	200	Annuity - Group	Form	Exempt
75	100/300	Annuity - Individual	Form	Exempt
75	100/400	Annuity - Variable	Form	Exempt

Group Annuity — Exempt Filings

Use all of the 200 DOI Series Numbers.

Individual Annuity — Exempt Filings

Use all of the 100 and the 300 DOI Series Numbers.

Variable Annuity — Exempt Filings

Use all of the 100 and the 400 DOI Series Numbers.

100 DOI SERIES NUMBERS - POLICIES AND POSITIONS

This section applies to all policies.

100. Does the insurer have annuity and life authority?
Section 38-1-20 (6) and 38-1-20 (27) Yes No N/A

101. Does the filing comply with Bulletin 2003-13? Yes No N/A

200 DOI SERIES NUMBERS— Group Annuities

No form filings are required for group annuities.

300 DOI SERIES NUMBERS—Individual Annuities

Are the following required contract provisions included and in compliance?

300. Entire Contract
Section 38-69-110 Yes No N/A

Note: The application must comply with the following:

- A. Application form(s) must also comply with Readability Regulation 69-5.1.
Hence, the agreement area of the application must be printed in ten point type, one point leaded, as required by Section D.(1)(b) and we must have a certificate with respect to that form as required by Section D.(4).
- B. Adequate provision must be made for statement of applicant regarding replacement of existing life insurance. (Regulation 69-12.1 Section 6. B.)
- C. Adequate provision must be made for statement of agent regarding replacement of existing life insurance. The agent's replacement question should be after the owner's signature. The owner cannot agree to the agent's portion of the application. (Regulation 69-12.1 Section 7. A.)

301. Required Standard Contract Provisions
Section 38-69-120 Yes No N/A

302. Brief Description of Benefits/Form Number
Section 38-69-120(1) Yes No N/A

303. Free-Look
Section 38-69-120(2) Yes No N/A

304. Authority to Modify Contract
Section 38-69-120(3) Yes No N/A

305. Incontestability
Section 38-69-120(4) Yes No N/A

Note:

- A. This Department takes exception to statements which undertake to make the contract effective during the "good health," "continued good health," or "continued insurability" of the insured unless they are modified to state "as stated in the application."
- B. This section permits no exception in the Incontestability Provision for supplemental benefits such as Waiver of Premium, Disability Income, Double Indemnity, etc.
- C. If the contract provision states that all statements in the application are representations and will be attached to the policy, the policy should contain a time limit for contesting statements in the application.

306. Misstatement of Age or Sex Section 38-69-120(5)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Note: A common error made by persons making filings is to add interest to the amounts payable by the insured when a misstatement of age or sex has occurred.	
307. Beneficiary Designation/Changes Section 38-69-120(6)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
308. Premium Payments Section 38-69-120(7)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
309. Grace Period Section 38-69-120(8)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
310. Reinstatement Section 38-69-120(9)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Note: If a policy is reinstated, there should not be a new incontestability period unless evidence of insurability is required. In this case, the incontestability period should apply only to statements made by the applicant to reinstate the policy.	
311. Dividends Section 38-69-120(10)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
312. Standard Nonforfeiture Law Section 38-69-120(11)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Note: A. An actuarial certification demonstrating compliance with the Standard Nonforfeiture Law must be included. B. The Department requires that either a table of minimum guaranteed cash values be included in the policy or that provision be made in the policy to provide the policyholder with an annual statement of values. C. Our position is that the phrase "cash value" may only be used to mean the actual amount an owner receives upon surrender of the policy. Does the form/actuarial certification demonstrate compliance with the Standard Nonforfeiture Law (SNFL)?	
313. Exceptions from the SNFL Section 38-69-220	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
314. Provisions Required in Contracts Section 38-69-230	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Note: Common Mistakes Include: A. Not including a statement that the company reserves the right to defer the payment of cash surrender benefits for a period of six months; B. Not disclosing the mortality table and interest rate used in calculating the guaranteed benefit; not including a statement to the effect that benefits available under the contract are not less than those required by any statute of the State in which the contract is delivered.	
315. Minimum Nonforfeiture Amounts Section 38-69-240	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Note: This section does not allow an annual maintenance charge in years when no premium is paid unless it is taken out of interest above that required by law.	
316. Value of Paid-up Annuity Benefit Section 38-69-250	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>

317. Cash Surrender Benefits Section 38-69-260	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
318. Contracts Without Cash Surrender Benefits Section 38-69-270	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
319. Maturity Date Under Certain Contracts Section 38-69-280	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
320. Statements Required in Certain Contracts Section 38-69-290	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
321. Calculating Benefits on Non-Anniversary Section 38-69-300	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
322. Contracts with Both Life & Annuity Benefits Section 38-69-310	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
323. Effective Date of SNFL Section 38-69-310	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
324. Annuity & Deposit Fund Disclosure Regulation Regulation 69-39	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
325. Unfair, deceptive, ambiguous, misleading, etc. Section 38-61-20	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Note: We are of the opinion that the policy should state which settlement option is automatic in the event the owner has not elected an option. The owner should be allowed to change the default option.	
326. Does form comply with Replacement Regulation 69-12.1?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
400 DOI SERIES NUMBERS – Variable Annuities	
400. Compliance w/required Statements for Variable Contracts Section 38-67-20	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
401. Does the policy comply with other applicable insurance laws? Section 38-67-50	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
402. Are the requirements for Variable Annuities met? Regulation 69-12	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>

South Carolina

Code of Laws, Regulations and Bulletins References

SECTION 38-1-20.

Definitions.

In this title unless the context otherwise requires: ...

(6) "Annuity" means every contract or agreement to make periodic payments, whether in fixed or variable dollar amounts, or both, at specified intervals....

(20) "Insurance producer" means a person who represents an insurance company and is required to be licensed in accordance with Section 38-43-10....

SECTION 38-69-110.

No defenses allowed if application not attached to annuity contract; oral applications.

If the insurer does not deliver with an annuity contract issued by it a copy of the application made by the insured, no defense is allowed to that annuity on account of anything contained in or omitted from the application. If the annuity is issued upon an oral application, no defense is allowed to the contract on account of anything contained in, or omitted from, the oral application.

SECTION 38-69-120.

Requirements for certain annuities and pure endowment contracts.

All fixed dollar annuities, variable annuities, pure endowment contracts, or reversionary annuities other than group annuities delivered or issued for delivery in this State must contain in substance the following:

(1) a brief and correct description of its benefits on the lower portion of its first page and an identifying form number on the lower left hand corner of its face;

(2) a provision stating clearly, understandably, and conspicuously on the first page that the contract holder is permitted to return the contract within ten days of its delivery to the contract holder. If replacement of an annuity contract is involved, the contract holder is permitted to return the contract within twenty days of its delivery to the contract holder. If the contract was solicited by a direct response insurer rather than through a licensed insurance agent, the provision must state that the contract holder is permitted to return the contract within thirty one days. The entire premium paid by the contract holder must be returned immediately to the contract holder;

(3) a provision stating who is authorized by the insurer to waive, alter, or change any of the terms or conditions of the contract. It may state also that no agent has the power or authority to waive, change, or alter any of the terms or conditions of the policy;

(4) a provision that the contract and any rider or supplemental benefits attached to the contract are incontestable as to the truth of the application for insurance and to the representations of the insured individual after they have been in force for two years from their date of issue. Any rider or supplemental benefits attached subsequently to the contract are incontestable as to the truth of the application for the rider or supplemental benefits and to the representations of the insured individual after they have been in force for two years from their date of issue. If an insurer institutes proceedings to vacate a contract on the ground of the falsity of the representations contained in the application for the contract, the proceedings must commence within the time permitted in this subsection;

(5) a provision that if it is found that the age or sex of the insured, or of any individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the contract is that as the premium would have purchased according to the correct age or sex;

(6) a provision stating how the beneficiary is designated and how the beneficiary may be changed;

(7) there must be a provision stating the amount of premium and the time and manner payable;

(8) a provision that the insured is entitled to a grace period of not less than thirty one days within which the payment of any premium after the first may be made. During the grace period, the contract continues in full force. If a claim arises under the contract during the grace period, the amount of any premium due or overdue may be deducted from any amount payable under the contract in settlement;

SECTION 38-69-120 continued

(9) a provision that the contract may be reinstated upon written application at any time within three years from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid. However, all overdue stipulated payments and indebtedness to the insurer on the contract must be paid or reinstated with interest thereon at a rate to be specified in the contract, but not exceeding eight percent a year compounded annually and, when applicable, the insurer may include also a requirement of evidence of insurability satisfactory to the insurer;

(10) a provision if the annuity contract is participating, that beginning not later than the end of the third contract year, the insurer shall ascertain annually and apportion any divisible surplus accruing on the contract;

(11) a provision that is in accordance with Article 5, Chapter 69, Title 38, Standard Nonforfeiture Law for Individual Deferred Annuities.

The director or his designee may approve contracts with provisions which vary from the provisions required in this section if the provisions are more favorable to the insured. Any of the provisions not applicable to single premium annuities, flexible premium annuities, or single premium pure endowment contracts need not be incorporated to that extent in the contract. This section does not apply to contracts for annuities included in or upon the lives of beneficiaries under life insurance contracts.

SECTION 38-69-220.

Exceptions from operation of article.

This article does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer including a partnership or sole proprietorship or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, or to any contract which is delivered outside this State through an agent or other representative of the company issuing the contract.

SECTION 38-69-230.

Provisions required in contracts; provision for termination for nonpayment of consideration.

In the case of contracts issued on or after the operative date of this article as defined in Section 38-69-320, no contract of annuity, except as stated in Section 38-69-220, may be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the director or his designee are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(a) That upon cessation of payment of considerations under a contract, the insurer shall grant a paid up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections 38-69-250, 38-69-260, 38-69-270, 38-69-280, and 38-69-300.

(b) If a contract provides for a lump sum settlement at maturity, or at any other time, that, 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 of the amount as is specified in Sections 38-69-250, 38-69-260, 38-69-270, 38-69-280, and 38-69-300. The insurer shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand therefore with surrender of the contract.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of these benefits.

(d) A statement that any paid up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract, or any prior withdrawals from or partial surrenders of the contract.

SECTION 38-69-230 continued

Notwithstanding the requirements of this section, any deferred annuity contract may provide that, if no considerations have been received under a contract for a period of two full years and the portion of the paid up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to that period would be less than twenty dollars monthly, the insurer may at its option terminate the contract by payment in cash of the then present value of that portion of the paid up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid up annuity benefit. This payment relieves the insurer of any further obligation under the contract.

SECTION 38-69-240.

Minimum forfeiture amounts for contracts issued before July 1, 2005.

(A) This section applies to a contract issued before July 1, 2005, and may be applied by an insurer, on a contract form by contract form basis, to a contract issued after June 30, 2005, and before July 1, 2007. This section does not apply to a contract issued after June 30, 2007.

(B) The minimum values as specified in Sections 38-69-250, 38-69-260, 38-69-270, 38-69-280, and 38-69-300 of any paid up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section.

(C) With respect to a contract providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of an annuity payment is equal to an accumulation up to that time at a rate of interest of three percent a year of percentages of the net considerations paid before that time, decreased by the sum of:

(1) any previous withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent a year; and

(2) the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract.

(D) The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount not less than zero and are equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty five cents for each consideration credited to the contract during that contract year. The percentages of net considerations are sixty five percent of the net consideration for the first contract year and eighty seven and one half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage is sixty five percent 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 previous contract years for which the percentage was sixty five percent.

(E) With respect to a contract providing for fixed scheduled considerations, minimum nonforfeiture amounts are calculated on the assumption that considerations are paid annually in advance and are defined as for contracts with flexible considerations which are paid annually with two exceptions:

(1) the portion of the net consideration for the first contract year to be accumulated is the sum of sixty five percent of the net consideration for the first contract year plus twenty two and one half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years;

(2) the annual contract charge is the lesser of:

(a) thirty dollars; or

(b) ten percent of the gross annual considerations.

(F) With respect to a contract providing for a single consideration, minimum nonforfeiture amounts are defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount is equal to ninety percent and the net consideration is the gross consideration less a contract charge of seventy five dollars.

SECTION 38-69-250.

Paid up annuity benefits; present value.

Any paid up annuity benefit available under a contract must be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. The present value must be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid up annuity benefits guaranteed in the contract.

SECTION 38-69-260.

Cash surrender benefits.

For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity may not be less than the present value as of the date of surrender of that portion of the maturity value of the paid up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, the present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event may any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts must be at least equal to the cash surrender benefit.

SECTION 38-69-270.

Contracts not providing cash surrender benefits.

For contracts which do not provide cash surrender benefits, the present value of any paid up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of that portion of the maturity value of the paid up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid up annuity. The present value is calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values are calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid up annuity benefit. However, in no event may the present value of a paid up annuity benefit be less than the minimum nonforfeiture amount at that time.

SECTION 38-69-280.

Maturity date under certain contracts.

For the purpose of determining the benefits calculated under Sections 38-69-260 and 38-69-270, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is considered to be the latest date for which election is permitted by the contract but may not be considered to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

SECTION 38-69-290.

Statements required in certain contracts.

Any 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 commencement of any annuity payments shall include a statement in a prominent place in the contract that those benefits are not provided.

SECTION 38-69-300.

Calculating benefits available other than on anniversary date.

Any paid up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, must be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

SECTION 38-69-310.

Contracts providing annuity and insurance benefits.

For any 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 must 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. Notwithstanding the provisions of Sections 38-69-250, 38-69-260, 38-69-270, 38-69-280, and 38-69-300, 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, must be disregarded in ascertaining the minimum nonforfeiture amounts and paid up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of such additional benefits is not required in any paid up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts and paid up annuity, cash surrender, and death benefits.

SECTION 38-61-20.

Approval of forms by director or designee; notification; withdrawal of approval; exemptions; optional accident or health riders.

(A) It is unlawful for an insurer doing business in this State to issue or sell in this State a policy, contract, or certificate until it has been filed with and approved by the director or his designee. The director or his designee may disapprove the form if it:

- (1) does not meet the requirements of law;
- (2) contains provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or
- (3) is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

However, this subsection does not apply to surety contracts or fidelity bonds, except as required in Section 38-15-10, or to insurance contracts, riders, or endorsements prepared to meet special, unusual, peculiar, or extraordinary conditions applying to an individual risk or exempt commercial policies.

(B) Within thirty days after the filing of a form requiring approval, the director or his designee shall notify the organization filing the form of the approval or disapproval of the form, and the reason if the form is disapproved. The director or his designee, in his discretion, may extend for up to an additional sixty days the period within which he shall approve or disapprove the form. A form received, but neither approved nor disapproved by the director or his designee, is deemed approved at the expiration of the thirty days if the period is not extended, or at the expiration of the extended period, if any. An organization may not use a form deemed approved pursuant to the default provision of this section until the organization has filed with the director or his designee a written notice of its intent to use the form. The notice must be filed in the office of the director at least ten days before the organization uses the form.

(C) At any time after having given written approval, and after an opportunity for a hearing for which at least thirty days' written notice has been given, the director or his designee may withdraw approval if he finds that the form:

- (1) does not meet the requirements of law;
- (2) contains provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or
- (3) is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

(D) The director or his designee may exempt from the requirements of subsection (A) as long as he considers proper any type of insurance policy, contract, or certificate to which in his opinion subsection (A) practically must not be applied, or the filing and approval of which, in his opinion, is not necessary for the protection of the public. However, each insurer at least annually shall list the types and form numbers of all policies it issues or sells in this State which the director or his designee has exempted from being filed and approved, and an officer of the insurer shall certify that all of these policies comply fully with the laws of this State. If a policy, contract, or certificate is certified to be in compliance with the laws of this State and the director or his designee finds it violates a law of this State, he may disqualify that insurer from certifying policies, contracts, or certificates allowed under this subsection.

(E) Nothing in this chapter precludes the issuance of a life insurance contract that includes an optional accident, health, or accident and health insurance rider. However, the optional accident, health, or accident and health insurance rider must be filed with and approved by the director or his designee pursuant to Section 38-71-310, 38-71-720, or 38-71-740, as appropriate, and comply with all applicable sections of Chapter 71 of this title and, in addition, in the case of long term care insurance, Chapter 72 of this title.

SECTION 38-61-50.

Standards for readability of certain contracts and policies; advice of other agencies concerning standards.

The director or his designee shall consult with and call upon the expertise of other state agencies, as may be necessary, to determine the standards to be promulgated and, after promulgation, the effectiveness of these standards. This consultation shall include, but is not limited to, the State Department of Education or its successor entity.

Regulation 69-5.1. Minimum Standards for the Readability of Commonly Purchased Insurance Policies.

This Regulation establishes minimum standards of readability applicable to all commonly purchased personal policies, contracts and certificates of insurance delivered or issued for delivery in this State.

A. Purpose:

The purpose of this Regulation is to establish minimum standards of readability applicable to all commonly purchased personal policies, contracts and certificates of insurance delivered or issued for delivery in this State.

This Regulation is not intended to increase the risk assumed by insurance companies or other entities subject to this Act or to supersede their obligation to comply with the substance of other insurance legislation applicable to such forms of insurance policies. This Regulation is not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

A policy is a legal document. Revision of the policy to make it more readable must not lead to its devaluation as a legal document. The policy must comply with all statutory and regulatory requirements.

B. Definitions:

As used in this Regulation:

(1) "Commissioner" means the Chief Insurance Commissioner of this State.

(2) "Policy" or "Policy Forms" means any policy, certificate, rider, amendment, endorsement, contract, plan or agreement of personal insurance, and any renewal thereof including homeowners, dwelling fire, automobile, accident and health, life and all other forms of personal insurance delivered or issued for delivery in this State by any company subject to this Regulation; any certificate, contract or policy issued by a fraternal benefit society, and any certificate issued pursuant to a group insurance policy delivered or issued for delivery in this State. The Commissioner may add other policies as he deems advisable.

(3) "Company" or "Insurer" means any life and health, accident, property and casualty, title or marine insurance company, reciprocal, county mutuals, fraternal benefit society, nonprofit health services corporation, nonprofit hospital service corporation, nonprofit medical service corporation, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar type organizations.

C. Applicability:

(1) This Regulation shall apply to all policies delivered or issued for delivery in this State by any insurer on or after the date such forms must be approved under this Regulation, but nothing in this Regulation shall apply to:

(a) Any policy which is a security subject to Federal jurisdiction;

(b) Any group policy; however, this shall not exempt any certificate issued pursuant to a group policy delivered or issued for delivery in this State or mass marketed certificates subject to approval by this Department;

(c) Any group annuity contract which serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;

(d) Commercial, fleet vehicle and incidental personal coverages which are a part of a commercial policy;

(e) Any life, accident and health form used in connection with, as a conversion from, as an addition to, in exchange for or issued pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the date such forms must be approved under this Regulation;

(f) Renewal of a life or accident and health policy delivered or issued for delivery prior to the date such forms must be approved under this Regulation;

(g) Surety or Fidelity bonds.

D. Minimum Policy Readability Standards:

(1) In addition to any other requirements of law, no policy forms of personal insurance except as stated

Regulation 69-5.1 Continued

in Section C, shall be delivered or issued for delivery in this State on or after the dates such forms must be approved under this Regulation unless:

- (a) The text achieves a minimum score of 40 on the Flesch Reading Ease Test or an equivalent score on any other comparable test as provided in subsection (3) of this Section;
- (b) It is printed, except for specification pages, schedules and tables, in not less than ten point type, one point leaded;

DRAFTING NOTE: This subsection is not intended to include minor instructions concerning the preparation of an application which becomes part of the policy within the type size requirement (e. g., "Last Name," "RFD or Box Number.")

- (c) The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsement or riders; and
- (d) It contains a table of contents or an index of the principal sections of the policy, if the policy has more than 3,000 words or if the policy is printed on more than 3 pages.

(2) For the purposes of this Section, a Flesch Reading Ease Test Score shall be measured by the following method:

- (a) For a policy containing 10,000 words or less of text, the entire policy shall be analyzed. For a policy containing more than 10,000 words, the readability of two 100 word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least 20 printed lines.
- (b) The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of 1.015.
- (c) The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of 84.6.
- (d) The sum of the figures computed under (b) and (c) subtracted from 206.835 equals the Flesch Reading Ease Test Score for the policy form.

(e) For purposes of this Section, the following procedures shall be used:

- (1) A contraction, hyphenated word, numbers and letters when separated by spaces shall be counted as one word;
- (2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions shall be counted as a sentence;
- (3) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(f) The term "text" as used in this Section shall include all printed matter except the following:

- (1) The name and address of the insurer; the name, number or title of the policy; the table of contents or index; captions and subcaptions; specification pages, schedules or tables;
- (2) Any policy language which is drafted to conform to the requirements of any federal law, regulation or agency interpretation; any policy language required by any collectively bargained agreement; any medical terminology; any words which are defined in the policy; and any policy language required by law or regulation; provided, however, the insurer identifies the language or terminology excepted by this subsection and certifies, in writing that the language or terminology is entitled to be excepted by this subsection.
- (3) Any other reading test may be approved by the Commissioner for use as an alternative to the Flesch Reading Ease Test if it is comparable in result to the Flesch Reading Ease Test.

DRAFTING NOTE: The Flesch Reading Ease Test (Rudolph Flesch, The Art of Readable Writing, 1949, as revised 1974) is the basic test set forth in this Regulation.

- (4) Filings subject to this Section shall be accompanied by a certificate signed by an officer of the insurer or filing organization stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with Section F of this Regulation. To confirm the accuracy of any certification, the Commissioner may require the submission of further information to verify the certification in question. If it is necessary to alter coverage, such change must be noted and explained upon submission for filing.

Regulation 69-5.1 Continued

(5) At the option of the insurer, riders, endorsements, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

E. Powers of the Commissioner:

The Commissioner may approve a policy which does not meet the minimum Flesch Reading Ease Test Score required herein whenever, in his sole discretion, he finds such approval:

- (1) will provide a more accurate reflection of the readability of a policy form;
- (2) is warranted by the nature of a particular policy, or
- (3) is warranted by certain policy language which is drafted to conform to the requirements of any State law, Regulation or Agency interpretation.

F. Approval of Forms:

A policy meeting the requirements of Section (D)(1) shall be approvable notwithstanding the provisions of any other law which specify the content of policies, if the policy provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

G. Effective Dates:

(1) Except as provided in Section C, no policy shall be delivered or issued for delivery in this State on or after two years next following final promulgation of this Regulation unless approved by the Commissioner or permitted to be issued under this Regulation. Any policy which has been approved or permitted to be issued prior to and which meets the standards set by this Regulation need not be refiled for approval, but may continue to be lawfully delivered or issued for delivery in this State upon the filing with the Commissioner of a list of such policies identified by form number, edition date, previous approval date accompanied by a certificate as to each such policy in the manner provided in Section D(4).

(2) In addition to the above requirements the effective date for all property and casualty policies shall be as follows:

(a) Renewal policies or continuous policies shall be reissued using forms in compliance with this Regulation on the first anniversary or billing date which occurs after a two year period following the final promulgation of this Regulation.

(b) The insurer shall provide, in the conversion to readable policies, generally and in overall effect, coverage which is substantially equal to or superior to that afforded by policies which they replace.

(c) If there are substantive differences in coverages, the insurer must explain in writing to the insured such differences.

(3) The Commissioner shall reserve the right to withdraw approval of all existing policies of commonly purchased insurance that do not comply with the provisions of this Regulation. The Commissioner may, in his sole discretion, extend the dates in Section G(1).

H. Penalties: Attention is directed to the penalties found in Section 5 of Act 550, "Any insurer who violates the provisions of this Act shall be deemed guilty of misdemeanor and upon conviction shall be fined not more than one thousand dollars for each offense and the Commissioner may revoke the license of any insurer who violates the provisions of this Act."

Regulation 69-12. Variable Contracts.

PART A VARIABLE ANNUITIES

Article I: Authority.

Part A of this Regulation, applicable to variable annuities, is promulgated under the authority of S. C. Code Section 38-67-40 (1976).

Article II: Definitions.

As used in Part A of this Regulation:

(1) The term “variable annuity” shall mean any policy or contract which provides for annuity benefits which vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in S. C. Code Section 38-67-10 (1976) or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

(2) “Agent” shall mean any individual licensed by the Commissioner as a life insurance agent.

(3) “Commissioner” shall mean the Chief Insurance Commissioner of South Carolina.

Article III: Qualification of Insurance Companies to Issue Variable Annuities.

(1) No insurance company shall deliver or issue for delivery variable annuities within this State unless (a) it is licensed or organized to do a life insurance or annuity business in this State, and (b) the Commissioner is 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. In this connection, the Commissioner shall consider among other things:

(i) The history and financial condition of the company;

(ii) The character, responsibility and fitness of the officers and directors of the company;

(iii) The law and regulation under which the company is authorized in its state of domicile to issue variable annuities.

(2) If the company is a subsidiary of an admitted life insurance company, or affiliated with such company by common management or ownership, it may be deemed by the Commissioner to have satisfied the provisions of clause (b) of Paragraph (1) hereof if either it or such admitted life company satisfies the aforementioned provisions; provided, further, that companies licensed and having a satisfactory record of doing business in this State for a period of at least three years may be deemed to have satisfied the Commissioner with respect to clause (b) of Paragraph (1) above.

(3) Before any company shall deliver or issue for delivery variable annuities within this State it shall submit to the Commissioner (a) a general description of the kinds of variable annuities it intends to issue, (b) if requested by the Commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable annuities, and (c) if requested by the Commissioner, biographical data with respect to officers and directors of the company on such forms as the Commissioner may approve.

Article IV: Separate Account.

A domestic company issuing variable annuities shall establish one or more separate accounts pursuant to S. C. Code Section 38-67-10 (1976), subject to the following provisions of this Article:

(1)(a) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in Paragraph (1)(b), (i) amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this State governing the investments of life insurance companies, and (ii) the investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(b) Reserves for (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest may be maintained in a separate account, if a portion of the assets of such separate account at least equal to such reserve liability is invested in accordance with the laws and regulations of this State governing the investments of life insurance companies. Such portion of the assets also shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

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(c) With respect to 75% of the market value of the total assets in a separate account, no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed 10% of the market value of the assets of said separate account; provided, however, that the Commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or policyholders in this State.

(d) Unless otherwise permitted by law or approved by the Commissioner, no company shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurance company and its separate accounts, in the aggregate, will own more than 10% of the total issued and outstanding voting securities of such issuer; provided, that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interest in such accounts.

(e) The limitations provided in Paragraphs (1)(c) and (1)(d) above shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with Paragraphs (1)(c) and (1)(d) hereof.

(2) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the Commissioner, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the benefits and funds referred to in clauses (i) and (ii) of Paragraph (1)(b) shall be valued in accordance with the rules otherwise applicable to the company's assets.

(3) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(4) Notwithstanding any other provisions of law, a company may

(a) with respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company, or

(b) with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the company. Such committee, board or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets.

A company, committee, board or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect; provided that the Commissioner approves such provisions as not hazardous to the public or the company's policyholders in this State.

(5) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in the case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the Commissioner. The Commissioner may authorize other transfers among such accounts, if, in his opinion, such transfers would not be inequitable.

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(6) The company shall maintain in each separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the Commissioner.

(7) Rules under any provision of the insurance laws of this State or any regulation applicable to the officers and directors of insurance companies with respect to conflict of interest shall also apply to members of any separate accounts committee, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

Article V: Filing of Contracts.

The filing requirements applicable to variable 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.

Article VI: Variable Annuity Contracts.

(1) Any variable annuity providing benefits payable in variable amounts 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 such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page a clear and prominent statement to the effect that the benefits thereunder are on a variable basis.

(2) Illustrations of benefits payable under any variable annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of benefits.

(3) No individual variable annuity contract calling for the payment of periodic stipulated payments to the insurer shall be delivered or issued for delivery in this State unless it contains in substance the following provision or provisions which in the opinion of the Commissioner are more favorable to the holders of such contracts:

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

(b) A provision that, at any time within one year from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, 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. 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 arising therefore;

(4) Any variable annuity contract delivered or issued for delivery in this State shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable annuity contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the expense and mortality factors shall be stipulated in the contract.

In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

(a) The annual net investment increment assumption shall not exceed 5% except with the approval of the Commissioner.

(b) To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, ultimate, or any modification of that

Regulation 69-12. Variable Contracts. Continued

table not having a lower life expectancy at any age, or, if approved by the Commissioner, from another table. "Expense" as used in this Paragraph, may exclude some or all taxes, as stipulated in the contract.

(5) The reserve liability for variable annuities shall be established pursuant to the requirements of S. C. Code Section 38-9-180 (1976) (the Standard Valuation Law) in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Article VII: Nonforfeiture Benefits.

(1) This Article shall not apply to any (i) reinsurance, (ii) group annuity contract purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combination thereof, or other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, (iii) premium deposit fund, (iv) investment annuity, (v) immediate annuity, (vi) deferred annuity contract after annuity payments have commenced, (vii) reversionary annuity, or to any (viii) contract which is to be delivered outside this state through an agent or other representative of the company issuing the contract.

(2) To the extent that any variable annuity contract provides benefits which do not vary in accordance with the investment performance of a separate account before the annuity commencement date, such contract shall contain provisions which satisfy the requirements of Chapter 69 of Title 38 of 1976 Code, (the Standard Nonforfeiture Law for Deferred Annuities) and shall not otherwise be subject to this Article.

(3) In the case of a contract issued one hundred eighty (180) days after the effective date of this regulation, no variable annuity contract, except as stated in Paragraphs (1) and (2), shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(a) That upon cessation of payment of considerations under a contract, the company will grant a paid up annuity benefit on a plan described in the contract that complies with Paragraph (7). Such description 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, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid up annuity benefit a cash surrender benefit as described in the contract that complies with Paragraph (8). The contract may provide that the company reserves the right, at its option, to defer the determination and payment of any cash surrender benefit for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such determination and payment impractical.

(c) A statement that any paid up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

(4) The minimum values as specified in this Article of any paid up annuity, cash surrender or death benefits available under a variable annuity contract shall be based upon nonforfeiture amounts meeting the requirements of this paragraph.

The 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 5) increased (or decreased) by the net investment return allocated to the percentages of net considerations, which amount shall be reduced to reflect the effect of:

- (i) any partial withdrawals from or partial surrenders of the contract;
- (ii) the amount of any indebtedness on the contract, including interest due and accrued;

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(iii) 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

(iv) a transaction charge of ten dollars (\$10.00) for each transfer to another separate account or to another investment division within the same separate account.

“Net investment return” means the rate of investment return to be credited to the variable annuity contract in accordance with the terms of the contract after deductions for tax charges, if any, and for asset charges either at a rate not in excess of that stated in the contract, or in the case of a contract issued by a non profit corporation under which the contract holder participates fully in the investment, mortality and expense experience of the account, in an amount not in excess of the actual expense not offset by other deductions. The net investment return to be credited to a contract shall be determined at least monthly.

The annual contract charge of thirty dollars (\$30.00) and the transaction charge of ten dollars (\$10.00) referred to above will be adjusted to reflect changes in the Consumer Price Index in accordance with Paragraph (6).

(5) The percentages of net considerations used to define the minimum nonforfeiture amount in Paragraph (4) 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 that 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 that contract year 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 percent (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 twenty five cents (\$1.25) 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 (6).

(6) Demonstration that a contract’s nonforfeiture amounts comply with this Article shall be based on the following assumptions:

(a) Values should be tested at the ends of each of the first twenty (20) contract years;

(b) A net investment return of 7% per year should be used;

(c) If the contract provides for transfers to another separate account or to another investment division within the same separate account, one transfer per contract year should be assumed;

(d) In determining the state premium tax, if any, applicable to the contract, the state of residence should be assumed to equal the state of delivery;

(e) With respect to contracts providing for periodic considerations, monthly considerations of \$100 should be assumed for each of the first 240 months;

(f) With respect to contracts providing for a single consideration, a \$10,000 single consideration should be assumed; and

(g) The following contract charges should be used:

(l) For contracts filed in 1980 or earlier, the annual contract charge of thirty dollars (\$30.00) referred to in Paragraphs (4) and (5), the charge of ten dollars (\$10.00) per transfer referred to in Paragraph (4), the collection charge of one dollar and twenty five cents (\$1.25) per consideration referred to in

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Paragraph (5), and the contract charge of seventy five dollars (\$75.00) referred to in Paragraph (5)(b).

(2) For contracts filed in 1981 or later, the above contract charges multiplied by the ratio of (i) the Consumer Price Index for June of the calendar year preceding the date of filing, to (ii) the Consumer Price Index for June, 1979.

(h) If the contract provides for allocation of considerations to both fixed and variable accounts, 100% of the considerations should be assumed to be allocated to the variable account.

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 its successor.

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 he deems to be suitable.

(7) Any paid up annuity benefit available under a variable annuity contract shall be such that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on the 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.

(8) For variable 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 company. The death benefit under such contracts shall be at least equal to the cash surrender benefits.

(9) Any variable 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.

(10) Notwithstanding the requirements of this Article, a variable annuity contract may provide under the situations specified in (a) or (b) below that the company, at its option, may cancel the annuity and pay the contract holder its accumulated value and by such payment be released of any further obligation under such contract:

(a) if at the time the annuity becomes payable the accumulated value 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 variable annuity 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 accumulated value, amount to less than \$2,000.

(11) For any variable 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. Notwithstanding the provisions of Paragraph (4), 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 Article. The inclusion of such additional benefits shall not be required in any paid up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid up annuity, cash surrender and death benefits.

Article VIII: Required Reports.

(1) Any company issuing individual variable annuities shall mail to the contract holder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account. The company shall submit annually to the Commissioner a statement of business of its separate account or accounts in such form as may be approved by the Commissioner.

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(2) Any company issuing individual variable annuities shall mail to the contract holder at least once in each contract year after the first at his last address known to the company a statement reporting as of a date not more than four months previous to the date of mailing. In the case of an annuity contract under which payments have not yet commenced, the report shall contain (a) the number of accumulation units credited to such contract and the dollar value of a unit, or (b) the value of the contract holder's account.

Article IX: Foreign Companies.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to policyholders and the public which is substantially equal to that provided by these regulations, the Commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations.

Article X: Qualifications of Agents for the Sale of Variable Annuities.

(1)(a) No person may sell or offer for sale in this state any variable annuity contract unless such person is an agent and has filed with the Commissioner, in a form satisfactory to the Commissioner, evidence that such person holds any license or authorization which may be required for the solicitation or sale of variable annuity contracts by any federal or state securities law.

(b) Any examination required by the Commissioner for the purpose of determining the eligibility of any person for licensing as an agent shall, after the effective date of this regulation, include such questions concerning the history, purpose, regulation, and sale of variable annuity contracts as the Commissioner deems appropriate.

(2) Any person qualified in this state under this Article to sell or offer to sell variable annuity contracts shall immediately report to the Commissioner:

(a) Any suspension or revocation of his agents license in any other state or territory of the United States;

(b) The imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension, or revocation of or denial of registration, imposed upon him by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable annuity contracts;

(c) Any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

(3) The Commissioner may reject any application or suspend or revoke or refuse to renew any agent's qualification under this Article to sell or offer to sell variable annuity contracts or impose monetary penalties upon any ground that would warrant similar disciplinary action arising out of the agent's sale of other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell or offer to sell variable annuity contracts.

PART B VARIABLE LIFE INSURANCE

Article I: Authority.

Section 1. Authority.

Part B of this Regulation, applicable to variable life insurance, is promulgated under the authority of S. C. Code Section 38-67-40 (1976).

Article II: Definitions.

As used in Part B of this Regulation:

Section 1. Affiliate.

"Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of such insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

Section 2. Agent.

"Agent" means any individual licensed by the Commissioner as a life insurance agent.

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Section 3. Assumed Investment Rate.

“Assumed investment rate” means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

Section 4. Benefit Base.

“Benefit base” means the amount to which the net investment return is applied.

Section 5. Commissioner.

“Commissioner” means the Chief Insurance Commissioner of South Carolina.

Section 6. Control.

“Control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten (10) percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the Commissioner that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Section 7. Flexible Premium Policy.

“Flexible premium policy” means any variable life insurance policy other than a scheduled premium policy as defined in this Article.

Section 8. General Account.

“General account” means all assets of the insurer other than assets in separate accounts established pursuant to S. C. Code Section 38-67-10 (1976) or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

Section 9. Incidental Insurance Benefit.

“Incidental insurance benefit” means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term riders.

Section 10. May.

“May” is permissive.

Section 11. Minimum Death Benefit.

“Minimum death benefit” means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

Section 12. Net Investment Return.

“Net Investment Return” means the rate of investment return in a separate account to be applied to the benefit base.

Section 13. Person.

“Person” means an individual, corporation, partnership, association, trust, or fund.

Section 14. Policy Processing Day.

“Policy processing day” means the day on which charges authorized in the policy are deducted from the policy’s cash value.

Section 15. Scheduled Premium Policy.

“Scheduled premium policy” means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

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Section 16. Separate Account.

“Separate account” means a separate account established pursuant to S. C. Code Section 38-67-10 (1976), or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

Section 17. Shall.

“Shall” is mandatory.

Section 18. Variable Death Benefit.

“Variable death benefit” means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.

Section 19. Variable Life Insurance Policy.

“Variable life insurance policy” means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to S. C. Code Section 38-67-10 (1976), or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

Article III: Qualification of Insurer to Issue Variable Life Insurance.

The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

Section 1. Licensing and Approval to do Business in this State.

An insurer shall not deliver or issue for delivery in this state any variable life insurance policies unless:

- (a) the insurer is licensed or organized to do a life insurance business in this state;
- (b) the insurer has obtained the written approval of the Commissioner for the issuance of variable life insurance policies in this state. The Commissioner shall grant such written approval only after he has found that:
 - (1) the plan of operation for the issuance of variable life insurance policies is not unsound;
 - (2) the general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and
 - (3) the present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The Commissioner shall consider, among other things:
 - (A) the history of operation and financial condition of the insurer;
 - (B) the qualifications, fitness, character, responsibility, reputation and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;
 - (C) the applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose; and
 - (D) if the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meets these standards.

Section 2. Filing for Approval to do Business in this State.

The Commissioner may, at his discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with this Department the following information for the consideration of the Commissioner in making the determination required by Section 1, subsection (b) of this Article:

- (a) copies of and a general description of the variable life insurance policies it intends to issue;
- (b) a general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to

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supply consulting, investment, administrative, custodial or distributive services to the insurer;

(c) with respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

(d) a description of any investment advisory services contemplated as required by Section 10 of Article VI;

(e) a copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies;

(f) biographical data with respect to officers and directors of the insurer on forms approved by the Commissioner; and

(g) a statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

Section 3. Standards of Suitability.

Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the Standards of Suitability to be used by the insurer. Such Standards of Suitability shall specify that no recommendation shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of such policy is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or the agent making the recommendation.

Section 4. Use of Sales Materials.

An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state which is false, misleading, deceptive, or inaccurate.

Section 5. Requirements Applicable to Contractual Services.

Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the Commissioner with any information or reports in connection with such services which the Commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with these regulations, and any other applicable law or regulations.

Section 6. Reports to the Commissioner.

Any insurer authorized to transact the business of variable life insurance in this state shall submit to the Commissioner, in addition to any other materials which may be required by this regulation or any other applicable laws or regulations:

(a) an Annual Statement of the business of its separate account or accounts in such forms as may be approved by the Commissioner; and

(b) prior to its use in this state, any information furnished to applicants as provided for in Article VII; and

(c) prior to its use in this state, the form of any of the Reports to Policyholders as provided for in Article IX; and

(d) such additional information concerning its variable life insurance operations or its separate accounts as the Commissioner shall deem necessary.

Any material submitted to the Commissioner under this Section shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the Commissioner shall require the distribution of amended material.

Section 7. 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 him not to comply with the standards established in this regulation.

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Article IV: Insurance Policy Requirements.

Policy Qualification. The Commissioner shall not approve any variable life insurance form filed pursuant to this regulation unless it conforms to the requirements of this Article.

Section 1. Filing of Variable Life Insurance Policies.

All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached and made a part of the policy, and which relate to the variable nature of the policy, shall be filed with the Commissioner and approved by him prior to delivery or issuance for delivery in this state.

(a) The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this regulation, the same as those otherwise applicable to other life insurance policies.

(b) The Commissioner may approve variable life insurance policies and related forms with provisions the Commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this regulation.

Section 2. Mandatory Policy Benefit and Design Requirements.

Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements.

(a) Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

(b) For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid [subject to the provisions of Section 4(b) of this Article];

(c) The policy shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

(d) Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

(e) Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

(f) The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non forfeiture benefits, as described either in the policy or in a statement filed with the Commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with the actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non forfeiture benefits must be at least equal to the minimum values required by Chapter 63 of Title 38 of the 1976 Code (the Standard Nonforfeiture Law for Life Insurance) for a general account policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Nonforfeiture Law of this state. If the policy does not contain an assumed investment rate, this demonstration shall be based on the maximum interest rate permitted under the Standard Nonforfeiture Law. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, but are not limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

(g) The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the Commissioner.

Section 3. Mandatory Policy Provisions.

Every variable life insurance policy filed for approval in this state shall contain at least the following:

(a) The coverage page or pages corresponding to the cover page of each such policy shall contain:

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(1) A prominent statement in either contrasting color or in boldface type that the amount or duration of death benefit may be variable or fixed under specified conditions;

(2) A prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

(3) A statement describing any minimum death benefit required pursuant to Section 2(b) of this Article;

(4) The method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death;

(5) A captioned provision that the policyholder may return the variable life insurance policy within 10 days of receipt of the policy by the policyholder, and receive a refund of premiums. Unless otherwise provided by state law, the policy may provide that the refund shall equal the total of all premium payments for the policy, or shall equal the sum of (A) the difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy and (B) the value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its agent.

(6) Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this regulation.

(b)(1) For scheduled premium policies, a provision for a grace period of not less than thirty one days from the premium due date which shall provide that when the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

(2) For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. Such grace period shall end on a date not less than 61 days after the mailing date of the Report to Policyholders required by Section 3 of Article IX.

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than 3 times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day.

(c) For scheduled premium policies, a provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

(1) All overdue premiums with interest at a rate not exceeding the policy loan interest rate in effect for the period during and after the lapse of the policy and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding the policy loan interest rate in effect for the period during and after the lapse of the policy; or

(2) 110% of the increase in cash value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding the policy loan interest at a rate not exceeding the policy loan interest rate in effect for the period during and after the lapse of the policy.

(d) A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

(e) A provision designating the separate account to be used and stating that:

(1) The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.

(2) The assets of such separate account shall be valued as often as any policy benefits vary, but at least monthly.

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- (f) A provision specifying what documents constitute the entire insurance contract under state law;
- (g) A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his behalf, shall be considered as representations and not warranties;
- (h) An identification of the owner of the insurance contract;
- (i) A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;
- (j) A statement of any conditions or requirements concerning the assignment of the policy;
- (k) A description of any adjustments in policy values to be made in the event of misstatement of age or sex of the insured;
- (l) A provision that the policy shall be incontestable by the insurer after two years from the date of issue, provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after two years from the date of issue of such increase;
- (m) A provision stating that the investment policy of the separate account shall not be changed without the approval of the Commissioner of the state of domicile of the insurer, and that the approval process is on file with the Commissioner of this state;
- (n) A provisions that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:
 - (1) For up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account, or
 - (2) Otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.
- (o) If settlement options are provided, at least one such option shall be provided on a fixed basis only;
- (p) A description of the basis for computing the cash value and the surrender value under the policy shall be included;
- (q) Premiums or charges for incidental insurance benefits shall be stated separately;
- (r) Any other policy provision required by this regulation;
- (s) Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this regulation.
- (t) A provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any nonforfeiture insurance options will not be available.

Section 4. Policy Loan Provisions.

Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following:

- (a) A provision for policy loans after the policy has been in force for three (3) full years which provides the following:
 - (1) At least 75% of the policy's cash surrender value may be borrowed.
 - (2) The amount borrowed shall bear interest at a rate not to exceed that permitted by state insurance law.
 - (3) Any indebtedness shall be deducted from the proceeds payable on death.
 - (4) Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.
 - (5) For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within thirty one days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay such charges, a report

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must be sent to the policyholder containing the information specified by Section 3 or Article IX.

(6) The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request.

(7) The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision.

(8) No policy loan provision is required if the policy is under the extended insurance nonforfeiture option.

(9) The policy loan provisions shall be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

(10) Amounts paid to the policyholders upon the exercise of any policy loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account.

Section 5. Other Policy Provisions.

The following provision may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

(a) An exclusion for suicide within two (2) years of the issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may also provide an exclusion for suicide within two (2) years of any increase in death benefits which result from an application of the owner subsequent to the policy issue date;

(b) Incidental insurance benefits may be offered on a fixed or variable basis;

(c) Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

(1) the amount of the dividend may be credited against premium payments;

(2) the amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

(3) the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

(4) the amount of the dividend may be applied to provide paid up amounts of fixed benefit one year term insurance;

(5) the amount of the dividend may be deposited as a variable deposit in a separate account.

(d) A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under Section 4 of this Article, except that a restriction may be imposed that no more than two consecutive premiums can be paid under this provision.

(e) A provision allowing the policyholder to make partial withdrawals;

(f) Any other policy provision approved by the Commissioner.

Article V: Reserve Liabilities for Variable Life Insurance.

(1) Reserve liabilities for variable life insurance policies shall be established under S. C. Code Section 38-9-180 (1976) (the Standard Valuation Law) in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(2) For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall not be less than the greater of the following minimum reserve:

(a) The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one third depreciation in the current value of the assets in the separate account followed by a net investment

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return equal to the assumed investment rate; or

(b) The aggregate total of the “attained age level” reserved on each variable life insurance contract. The “attained age level” reserve on each variable life insurance contract shall not be less than zero and shall equal the “residue”, as described in Paragraph (1), of the prior year’s “attained age level” reserve on the contract, with any such “residue”, increased or decreased by a payment computed on an attained age basis as described in Paragraph (2) below.

(1) The “residue” of the prior year’s “attained age level” reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year’s reserve, deducting the tabular claims based on the “excess”, if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The “excess” referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

(2) The payment referred to in Subsection 2(b) of this Article shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any “residue”, as described in Paragraph (1), of the prior year’s “attained age level” reserve on such variable life insurance contract. If the contract is paid up, the payment shall equal (A) minus (B) minus (C). The amounts of the future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

(c) The valuation interest rate and mortality table used in computing the two minimum reserves described in (a) and (b) above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

(3) For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit shall be maintained in the general account of the insurer and shall not be less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an immediate one third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate. The valuation interest rate and mortality table used in computing this additional reserve, if any, shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

(4) Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable accidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

Article VI: Separate Accounts.

The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

Section 1. Establishment and Administration of Separate Accounts.

Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to S. C. Code Section 38-67-10 (1976).

(a) If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing and the Commissioner shall have authority to review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

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(b) Such insurer shall not without prior written approval of the Commissioner employ in any material in connection with the handling of separate account assets any person who:

(1) within the last ten years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of Sections 1341, 1342 or 1343 of Title 18, United States Code; or

(2) within the last ten years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or

(3) within the last ten years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.

(c) All persons with access to the cash, securities, or other assets of the separate account shall be under bond in such amounts as the Commissioner may in his discretion prescribe.

(d) The assets of such separate accounts shall be valued at least as often as variable benefits are determined but in any event at least monthly.

Section 2. Amounts in the Separate Account.

The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

Section 3. Investments by the Separate Account.

(a) No sale, exchange, or other transfer of assets may be made by any insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(1) in case of transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

(2) such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the Commissioner in advance.

(b) The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

Section 4. Limitations on Ownership.

(a) A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by these regulations, would exceed 10% of the value of the assets of the separate account. The Commissioner may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

(b) No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts in the aggregate, will own more than 10% of the total issued and outstanding voting securities of such issuer. The Commissioner may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

(c) The percentage limitation specified in Subsection (a) of this Section shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of Section 3 of this Article and other applicable portions of this regulation.

Section 5. Valuation of Separate Account Assets.

Investments of the separate account shall be valued at their market value on the date of valuation, or at

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amortized cost if it approximates market value.

Section 6. Separate Account Investment Policy.

The investment policy of a separate account operated by a domestic insurer filed under Section 2(c) of Article II shall not be changed without first filing such change with the Commissioner.

(1) Any change filed pursuant to this Section shall be effective sixty days after the date it was filed with the Commissioner, unless the Commissioner notifies the insurer before the end of such sixty day period of his disapproval of the proposed change. At any time the Commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this Section.

(2) The Commissioner may disapprove the change if he determines that the change would be detrimental to the interests of the policyholders participating in such separate accounts.

Section 7. Charges Against Separate Account.

The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to, the following:

- (1) taxes or reserves for taxes attributable to investment gains and income of the separate account;
- (2) actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;
- (3) actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;
- (4) charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;
- (5) a charge, at a rate specified in the policy, for mortality and expense guarantees;
- (6) any amounts in excess of those required to be held in the separate accounts;
- (7) charges for incidental insurance benefits.

Section 8. Standards of Conduct.

Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its Board of Directors a written statement specifying the Standards of Conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such Standards of Conduct shall be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17(j) under the Investment Company Act of 1940 and applicable rules and regulations thereunder shall satisfy the provisions of this Section.

Section 9. Conflicts of Interest.

Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

Section 10. Investment Advisory Services to a Separate Account.

An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance policies unless:

- (1) the person providing such advice is registered as an investment adviser under the Investment Advice Act of 1940; or
- (2) the person providing such advice is an investment manager under the Employee Retirement Income Security Act of 1974, with respect to the assets of each employee benefit plan allocated to the separate account; or
- (3) the insurer has filed with the Commissioner and continues to file annually the following information and statements concerning the proposed advisor:
 - (a) the name and form of organization, state of organization, and its principal place of business;
 - (b) the names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment advisory be an individual, of such individual;
 - (c) a written Standard of Conduct complying in substance with the requirements of Section B of this Article which has been adopted by the investment advisor and is applicable to the investment advisor,

Regulation 69-12. Variable Contracts. Continued

its officers, directors, and affiliates;

(d) a statement provided by the proposed advisor as to whether the advisor or any person associated therewith:

(i) has been convicted within ten years of any felony or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment advisor involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of Sections 1341, 1342, or 1343 of Title 18 of United States Code;

(ii) has been permanently or temporarily enjoined by an order, judgment or decree of any court of competent jurisdiction from acting as an investment advisor, underwriter, broker or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

(iii) has been found by federal or state regulatory authorities to have violated or have acknowledged violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or

(iv) has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state regulatory authorities; and

(4) such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty days' written notice to the investment advisor.

The Commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

Article VII: Information Furnished to Applicants.

An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for such policy, and obtain a written acknowledgment of receipt from such applicant coincident with or prior to the execution of the application, the following information. The requirements of this Article shall be deemed to have been satisfied to the extent that a disclosure containing information required by this Article is delivered, either in the form of (1) a prospectus included in the requirements of the Securities Act of 1933 and which was declared effective by the Securities Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof.

(1) A summary explanation, in non technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by Article IV, Sections 3(a)(5) and 3(f).

(2) A statement of the investment policy of the separate account, including:

(a) a description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

(b) any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted.

(3) A statement of the net investment return of the separate account for each of the last ten years or such lesser period as the separate account has been in existence.

(4) A statement of the charges levied against the separate account during the previous year.

(5) A summary of the method to be used in valuing assets held by the separate account.

(6) A summary of the federal income tax aspects of the policy applicable to the insured, the policyholder, and the beneficiary.

(7) Illustrations of benefits payable under the variable life insurance contract. Such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or

Regulation 69-12. Variable Contracts. Continued

attempted predictions of future investments experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

Article VIII: Applications.

The application for a variable life insurance policy shall contain:

- (1) a prominent statement that the death benefit may be variable or fixed under specified conditions;
- (2) a prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees);
- (3) questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

Article IX: Reports to Policyholders.

Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

(1) Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, any optional payments allowed pursuant to Section (4) of Article IV under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than sixty days prior to the mailing of such notice. This statement shall state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this Section. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: (i) planned periodic premiums, if any, are paid as scheduled; (ii) guaranteed costs of insurance are deducted; and (iii) the net return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid.

(2) Annually, a statement or statements including:

- (a) a summary of the financial statement of the separate account based on the annual statement last filed with the Commissioner;
- (b) the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available;
- (c) a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the Commissioner;
- (d) any charges levied against the separate account during the previous year;
- (e) a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment advisor of the separate account.

(3) For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount.

Regulation 69-12. Variable Contracts. Continued

Article X: 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 by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations.

Article XI: Qualifications of Agents for the Sale of Variable Life Insurance.

(1) Qualification to Sell Variable Life Insurance.

(a) No person may sell or offer for sale in this state any variable life insurance policy unless such person is an agent and has filed with the Commissioner, in a form satisfactory to the Commissioner, evidence that such person holds any license or authorization which may be required for the solicitation or sale of variable life insurance.

(b) Any examination required by the Commissioner for the purpose of determining the eligibility of any person for licensing as an agent shall, after the effective date of this regulation, include such questions concerning the history, purpose, regulation, and sale of variable life insurance as the Commissioner deems appropriate.

(2) Reports of Disciplinary Actions. Any person qualified in this state under this Article to sell or offer to sell variable life insurance shall immediately report to the Commissioner:

(a) any suspension or revocation of his agent's license in any other state or territory of the United States;

(b) the imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension, or revocation of or denial of registration, imposed upon him by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable life insurance;

(c) any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

(3) Refusal to Qualify Agent to Sell Variable Life Insurance: Suspension, Revocation, or Non renewal of Qualification. The Commissioner may reject any application or suspend or revoke or refuse to renew any agent's qualification under this Article to sell or offer to sell variable life insurance or impose monetary penalties upon any ground that would warrant similar disciplinary arising out of the agent's sale of other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell or offer to sell variable life insurance.

PART C SEPARABILITY

If any provision of this Regulation or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the Regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

PART D EFFECTIVE DATE

This Regulation shall take effect on July 1, 1988.

Regulation 69-12.1. Replacement of Life Insurance and Annuities.

Statutory Authority:

1976 Code Sections 1-23-10, 38-3-110, 38-57-60, 38-63-10, 38-63-20, 38-65-10, 38-65-20, 38-69-10, 38-69-20

Section 1. Purpose.

The purpose of this Regulation is:

- A. To regulate the activities of insurers, agents and brokers with respect to the replacement of existing life insurance and annuities.
- B. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:
 - 1. Assuring that purchasers receive information with which a decision can be made in his or her own best interest;
 - 2. Reducing the opportunity for misrepresentation and incomplete disclosures; and
 - 3. Establishing penalties for failure to comply with requirements of this Regulation.

Section 2. Definition of Replacement.

“Replacement” means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or broker or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance or annuity has been or is to be:

- A. Lapsed, forfeited, surrendered, or otherwise terminated;
- B. Converted to reduced paid up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- C. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- D. Reissued with any reduction in cash value; or
- E. Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty five percent (25%) of the loan value set forth in the policy.

Section 3. Other Definitions.

- A. “Conservation” means any attempt by the existing insurer or its agent or broker to dissuade a policy owner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.
- B. “Direct Response Sales” means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.
- C. “Existing Insurer” means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of “replacement”.
- D. “Existing Life Insurance or Annuity” means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.
- E. “Replacing Insurer” means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.
- F. “Registered Contract” means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

Section 4. Exemptions.

Unless otherwise specifically included, this Regulation shall not apply to transactions involving:

- A. Credit life insurance;
- B. Group life insurance and group annuities;

Regulation 69-12.1. Continued

C. An application to the insurer that issued the existing life insurance to effect a change permitted by contract or to exercise a conversion privilege contained in the contract;

D. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

E. Transactions where the replacing insurer and the existing insurer are the same; provided, however, agents or brokers proposing replacement shall comply with the requirements of Section 5.A; and

F. Registered Contracts shall be exempt from the requirements of Sections 7.B.2. and 7.B.3. requiring provision of Policy Summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

G. Existing life insurance that is a non convertible term life insurance policy which will expire in five years or less and cannot be renewed.

Section 5. Duties of Agents and Brokers.

A. Each agent or broker who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:

1. A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

2. A signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.

B. Where a replacement is involved, the agent or broker shall:

1. Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in Exhibit A, or other substantially similar form approved by the Commissioner. The Notice shall be signed by both the applicant and the agent or broker and left with the applicant.

2. Obtain with or as part of each application a list of all existing life insurance and/or annuity to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

3. Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant.

4. Submit to the replacing insurer with the application a copy of the Replacement Notice provided pursuant to Section 5.B.1.

C. Each agent or broker who uses written or printed communications in a conservation shall leave with the applicant the original or a copy of such materials used.

Section 6. Duties of All Insurers.

Each insurer shall:

A. Inform its field representatives or other personnel responsible for compliance with this Regulation of the requirements of this Regulation.

B. Require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

Section 7. Duties of Insurers that Use Agents or Brokers.

Each insurer that uses an agent or broker in a life insurance or annuity sale shall:

A. Require with or as part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.

B. Where a replacement is involved:

1. Require from the agent or broker with the application for life insurance or annuity (i) a list of all of the applicant's existing life insurance or annuity to be replaced and (ii) a copy of the Replacement Notice provided the applicant pursuant to Section 5.B.1. Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the

Regulation 69-12.1. Continued

existing insurer, alternative identification, such as an application or receipt number, shall be listed.

2. Send to each existing insurer a written communication advising of the replacement or proposed replacement including the identification information obtained pursuant to Section 7.B.1. and a Policy Summary, Contract Summary or ledger statement containing Policy Data on the proposed life insurance or annuity as required by Regulation 69 30 (Solicitation of Life Insurance) and/or Regulation 69 39 (Annuity and Deposit Fund Disclosure Regulation). Cost indices and equivalent level annual dividend figures need not be included in the Policy Summary or ledger statement. This written communication shall be made within three (3) working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

3. Each existing insurer or such insurer's agent or broker that undertakes a conservation shall, within twenty days from the date the written communication plus the materials required in Section 7.B.1. and section 7.B.2 is received by the existing insurer, furnish the policy owner with a Policy Summary for the existing life insurance or ledger statement containing Policy Data on the existing policy and/or annuity. Such Policy Summary or ledger statement shall be completed in accordance with the provisions of Regulation 69 30, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in a Contract Summary under Regulation 69 39. The replacing insurer may request the existing insurer to furnish it with a copy of the Summaries or ledger statement, which shall be within five working days of the receipt of the request.

C. The replacing insurer shall maintain evidence of the "Notice Regarding Replacement", the Policy Summary, the Contract Summary and any ledger statements used, and a replacement register, cross indexed, by replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries, Contract Summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.

D. The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty days commencing from the date of delivery of the policy.

Section 8. Duties of Insurers with respect to Direct Response Sales.

A. If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner. In such instances, the insurer may delete the last sentence and the references to signatures from Exhibit A without having to obtain approval of the form from the Commissioner.

B. If the insurer proposed the replacement it shall:

1. Provide to applicants or prospective applicants with or as a part of the application a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner.

2. Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured.

3. Comply with the requirements of Section 7.B.2., if the applicant furnishes the names of the existing insurers, and the requirements of Section 7.C., except that it need not maintain a replacement register.

Section 9. Penalties.

A. A violation of this Regulation shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of

Regulation 69-12.1. Continued

an existing contract's premiums and benefits or dividends and values, if any. Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this Regulation shall be subject to such penalties as may be appropriate under the Insurance Laws.

B. Patterns of action by policy owners who purchase replacing policies from the same agent or broker, after indicating on applications that replacement is not involved, shall be deemed prima facie evidence of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's or broker's intent to violate this Regulation.

C. This Regulation does not prohibit the use of additional material other than that which is required that is not in violation of this Regulation or any other statute or regulation.

Section 10. Severability.

If any section or portion of a section of this Regulation, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this Regulation, or the applicability of such provision to other persons, shall not be affected thereby.

Section 11. Effective Date.

This Regulation shall become effective ninety days after final publication in the State Register.

EXHIBIT A

(NAME, ADDRESS AND TELEPHONE NUMBER OF THE INSURANCE COMPANY)

NOTICE REGARDING REPLACEMENT

REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy to give you information about it. You are urged not to take action to terminate, assign or alter your existing policy until your new policy has been issued and you have examined it and found it acceptable. Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

We are required by law to notify your existing company that you may be replacing their policy.

Applicant's Signature

Date

Agent's Signature



Bulletin 1989-1

FROM: John G. Richards
Chief Insurance Commissioner

DATE: January 31, 1989

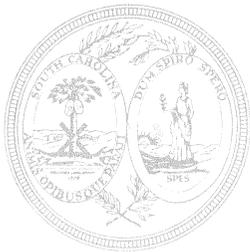
RE: EFFECTIVE DATE OF CONTRACT AND INCONTESTABILITY CLAUSE

Group policies issued outside of this state which extend coverage to residents of this state

South Carolina Code SECTIONS 38-65-60 and 38-71-750 set out the requirements for group life and group accident and health insurance policies, respectively, issued outside of South Carolina which extend coverage to residents in South Carolina. These statutes clearly provide that while such policies need not receive approval to be used in South Carolina, they must nevertheless conform to South Carolina's requirements for group life, accident and health insurance and must be made available to the Department on an informational basis.

Effective immediately, all group life, accident and health insurance policies and certificates, other than "mass marketed" policies and certificates as defined under SECTIONS 38-65-50 and 38-71-740, issued outside of this State which cover residents of this State must be filed in duplicate with the South Carolina Department of Insurance on an informational basis. All such filings, whether pending or new filings, must be accompanied by a sworn certification executed by an officer of the insurer that the policy forms fully comply with SECTION 38-65-210 in the case of group life insurance or with Article 5 of Chapter 71 of Title 38 in the case of group accident and health insurance. The certification should also state that the insurer will comply with the requirements of this State relating to advertising and to claims settlement practices with respect to the insurance. A postage paid return envelope should also be enclosed with the filing. All "mass-marketed" forms must be filed for approval prior to use in this State.

If it is determined, notwithstanding the certification as required in the second paragraph of this Bulletin, that the policy form does not comply with South Carolina's group life, accident and health insurance laws, appropriate disciplinary action will be instituted.



South Carolina Department of Insurance

300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223

MARK SANFORD
Governor

ERNST N. CSISZAR
Director of Insurance

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BULLETIN NUMBER 2003-13 (Issued Upon November 24, 2003)

To: All Insurers Licensed to Transact Life and/or Accident and Health Insurance Business within the State of South Carolina and All South Carolina Licensed Health Maintenance Organizations

From: Ernst N. Csiszar
Director of Insurance

A handwritten signature in black ink, appearing to read "Ernst N. Csiszar", is written over the printed name of the Director of Insurance.

Re: List of "Exempt" Policy Forms, Filing Procedures for "Exempt" and "Prior Approval" Forms and Rate Filings, Establishing Audit Procedures and Withdrawal of Bulletin 93-2

I. PURPOSE

The purpose of this bulletin is to streamline the exemption standards and procedures for filing life, accident and health insurance policy forms. This bulletin does not exempt rates that are subject to prior approval from prior approval. Accordingly, the exemption standards and filing procedures previously established by this Department have been revised. Specifically, this bulletin will:

1. List the "exempt" policy forms from the requirements of prior approval in accordance with S.C. Code Ann. §38-61-20 (D);
2. Establish filing procedures for filing "Exempt" and "Prior Approval" Forms and Rate Filings;
3. Establish audit procedures for "Exempt" filings; and
4. Withdraw and replace Bulletin 93-2.

II. LIST OF "EXEMPT" POLICY FORMS

Section 38-61-20(D), as amended, permits the Director of Insurance or his designee to exempt from prior approval those policy forms for which, in his opinion, prior approval is not necessary to protect the public. Accordingly, the Department has carefully reviewed the forms currently subject to prior approval to determine which are appropriate for exemption. Based upon this review the following categories of forms have been exempted from prior approval because policy language is somewhat standard and the

Department receives few, if any, consumer complaints related to these policy forms. Until further notice, the following types of forms are hereby exempt from prior approval by this Department unless the circumstances warranting their exemption change:

1. Individual life insurance policies. This applies to both fixed and variable life.
2. Individual annuity policies. This applies to both fixed and variable annuities.
3. Group life insurance policies. Mass-marketed policies as defined in S.C. Code § 38-65-50 will be subject to prior approval as outlined in S.C. Code § 38-65-60 (3).
4. Group annuity policies. This applies to both fixed and variable annuities. (NOTE: Group annuity policies/certificates etc are exempted from filing under any filing procedure including the annual exemption list.)
5. Individual accident and health insurance policies [other than health insurance coverage as defined in Section 38-71-670 (6) (i.e. policies subject to HIPAA of 1996), long term care insurance policies, and Medicare Supplement insurance policies].
6. Group accident and health insurance policies [other than health insurance as defined in Section 38-71-840 (14) (i.e. policies subject to HIPAA of 1996), long term care insurance policies, and Medicare Supplement insurance policies.] Mass-marketed policies as defined in S.C. Code § 38-71-740 will be subject to prior approval as outlined in S.C. Code § 38-71-750 (3).
7. Certificates, applications, riders, endorsements and amendments issued in conjunction with 1 through 6 above.

III. FILING REQUIREMENTS FOR “EXEMPT” FILING (S)

Although the forms specified above are exempt from prior approval, insurers must continue to file such forms with the Department and must continue to follow the procedures outlined in Section IV of this bulletin. The cover letter of each filing (SERFF and paper) must be prominently captioned to indicate the exempt status of the filing and must state that the forms filed are exempt from prior approval. In addition, all forms contained within the filing must be listed in the cover letter or in a separate attachment. If the filing contains certificates, applications, riders, endorsements and/or amendments, the cover letter must state the specific types of policies with which these forms will be used.

Upon the insurer’s receipt of an “Exempt” status from the Department, the insurer may issue or sell the forms in the State. If the filing contains the information required by this bulletin, including the certification required by Section IV (10) below, the Department will, for paper filings, stamp the cover letter "Exempt" and return a copy to the insurer. For SERFF filings, the Department will send a final “Closed Exempt” disposition to the insurer indicating that the forms included in the cover letter are “Exempt”. See Section V of this bulletin for audit procedures.

Each insurer shall submit to the Department an annual list including all the policy forms it issues or sells in South Carolina and which had been accepted as "Exempt" from having to be filed and approved by the Director or his designee. The annual list should cover a 12-month period of filings, as determined by the insurer (example: a January 1 to December 31 period or a July 1 to June 30 period, etc.). The annual list must be submitted to the Department as soon as reasonably possible after the end of the reporting period elected by the insurer. An officer of the insurer shall certify to the best of his knowledge and belief that all policy forms comply fully with the applicable statutes, regulations, and bulletins of the State of South Carolina.

NOTE: Domestic insurers may request a formal full review of "Exempt" filings in order to provide proof of domiciliary approval to other states. Please request this exception via the cover letter.

IV. FILING PROCEDURES FOR "EXEMPT" and "PRIOR APPROVAL" FORMS AND RATE FILINGS

In general the only forms subject to prior approval are individual and group Long Term Care insurance policies, Medicare Supplement insurance policies and health insurance coverage as defined in Sections 38-71-670 (6) and 38-71-840 (14). Mass marketed policies as defined in Section 38-65-50 and 38-71-740 are also subject to prior approval.

1. All paper filings must be directed to the attention of the Life, Accident and Health Section. The submission should include two copies of the cover letter and only one copy of the forms. For SERFF filings, one copy of the cover letter and one copy of the form must be submitted.
2. All submissions must include one self-addressed, stamped return envelope large enough to return the filing(s). This does not apply to SERFF filings.
3. The cover letter must be prominently captioned to indicate the status of the filing (i.e., filing for approval, exempt from prior approval). In addition, all form numbers contained within the filing must be listed on the cover letter or in a separate attachment. The cover letter must describe the filing, including the type of forms, any unusual aspects of the forms, and how and to whom the forms will be marketed. If the filing contains certificates, applications, riders, endorsements and/or amendments, the cover letter must state the specific types of policies with which these forms will be used.
4. All forms must be accompanied by a Certificate of Readability signed by an officer of the insurer as required under Regulation 69-5.1, except those forms excluded under SECTION C of that regulation.
5. A Form SCID 1504 must be furnished with all individual accident and health insurance forms and rate filings pursuant to Bulletin #8-84.

6. All individual accident and health and group Medicare supplement filings must include the premium rates and supporting actuarial memorandum.

7. If a detailed statement of the method of computation of reserves, nonforfeiture values and benefits available under the policy is not incorporated in each life policy submitted for approval, such a statement must accompany the submitted form.

8. Life and annuity filings must include all applicable disclosure materials such as the Statement of Policy Cost and Benefit Information required for individual life policies under Regulation 69-30, the Contract Summary required for individual annuities under Regulation 69-39 and Life Insurance Illustrations required under Regulation 69-40. If the policy is illustrated in accordance with Regulation 69-40, insurers do not need to furnish the Statement of Policy Cost and Benefit Information.

9. Group life and group accident and health insurance policies (other than long term care insurance as provided in Section 38-72-50) issued outside of this State that extend coverage to residents of this State must also be filed for informational purposes only in accordance with Bulletin 89-1. This does not apply to group annuity filings. Upon the insurer's receipt of an "Exempt" status from the Department, the insurer may issue or sell the forms in the State. All exempt form filings may be subject to audit.

10. To ensure that insurers review their forms prior to submission and to ascertain their compliance with South Carolina statutes, regulations and bulletins, the filing must include the following certification by an officer of the insurer:

"I have reviewed or supervised the review of the policy forms contained in this filing and hereby certify to the best of my knowledge and belief that they are in compliance with the applicable statutes, regulations and bulletins of the State of South Carolina. I further certify that the forms will be revised and/or discontinued as appropriate in the event of future changes in the statutes, regulations or bulletins."

V. AUDIT PROCEDURES FOR "EXEMPT" FILING (S)

All forms that are exempt from prior approval may be subject to audit by this Department. SCDOI checklists and supplemental checklists will be used to conduct audits of policy forms and certificates.

Life, Accident and Health Analysts will be required to utilize a statute, regulation, bulletin, and/or a legal opinion with every criteria point and should not submit disapproval points that cannot be referenced by the aforementioned.

If a form is found to be in violation of South Carolina statutes, regulations or bulletins, the insurer must, within fifteen calendar days of notification of the violation, advise the Department if the form has been issued or sold in South Carolina:

- If the form has not been issued, the insurer may revise the form to be in compliance with South Carolina statutes, regulations and bulletins and resubmit the form to the Department in accordance with this Bulletin. If the insurer does not wish to resubmit the form, the insurer must notify the Department within fifteen calendar days from the date it is notified of the violation that it is withdrawing the form.

- If the form has been issued, the insurer should:
 - Submit a plan to the Department within thirty calendar days of date of the violation notification letter detailing the action plan that will be taken to correct the violations. The action plan should address whether steps are necessary to notify current insureds of the revisions to their coverage. These steps may include issuing revised forms and/or explanation letters.
 - Submit any forms necessary to correct the violation(s).
 - The Department will review the action plan and any forms to redress the violations within 30 calendar days of receipt. If acceptable, the cover letter will be stamped “Exempt” and the insurer must implement the action plan within 30 calendar days.

If a filed form is certified to be in compliance with South Carolina statutes, regulations and bulletins, and the director or his designee finds that not to be the case, he may disqualify that insurer from using the “Exempt” certification process provided under this bulletin.

VI. WITHDRAWAL OF BULLETIN 93-2

Bulletin 93-2 previously issued by this Department is hereby withdrawn. This bulletin supersedes and replaces any and all bulletins addressing exemption standards and procedures for filing Life, Accident and Health Insurance Policy Forms, except Bulletin 89-1.

VII. EFFECTIVE DATE

This Bulletin is effective upon the issuance date of November 17, 2003.

VIII. QUESTIONS

Please direct any questions that you may have about this bulletin to the attention of June DuBard, Manager, Life, Accident and Health Section at (803) 737-6230 or jdubard@doi.state.sc.us.