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*Commissioner*

**BULLETIN NO. 09-06**

**TO: ALL LIFE INSURANCE COMPANIES AND FRATERNAL BENEFIT SOCIETIES TRANSACTING BUSINESS IN NEW JERSEY**

**FROM: STEVEN M. GOLDMAN, COMMISSIONER**

**RE: P.L. 2008, c. 88 -- INDIVIDUAL FIXED DEFERRED AND IMMEDIATE ANNUITY FORM FILING AND SUITABILITY NOTICE REQUIREMENTS**

P.L. 2008, Chapter 88 (the "Act"), was approved September 19, 2008 and becomes effective on April 1, 2009. The Act provides marketing, information disclosure, and product suitability requirements for all current and future issues of individual fixed deferred and immediate annuity contracts solicited directly to consumers. Among other things, the Act requires the Commissioner of Banking and Insurance ("Commissioner") to approve an annuities buyer's guide and the standard form of an annuity contract disclosure statement to be used by an insurance agent or insurer in the solicitation, negotiation or sale of an annuity. The Act also requires those selling these products to make reasonable efforts to obtain and record information about the suitability of the product for the solicited consumer and the consumer's acknowledgement of the information recorded. Pending the Department's adoption of regulations implementing the Act, the purpose of this Bulletin is to provide guidance to all life insurance companies and fraternal benefit societies regarding compliance with the Act's form filing and suitability notice requirements.

**Form Filings**

The following requirements apply to forms submitted to the Department, including those submitted by way of SERFF and the "40 States Rule." Effective April 1, 2009, all individual fixed deferred and immediate annuity forms available for sale in New Jersey must be accompanied by, or include, the following:

- **Buyer's Guide:** An approved buyer's guide must include at least a description of various kinds of annuities; standard features of annuities, including at least a 10-day cancellation period; and information concerning the negotiation and sale of annuities. The buyer's guide may be either substantially similar to any NAIC model annuities buyer's guide or any other Department-approved document intending to serve as an annuities buyer's guide. An NAIC

model-based guide does not require the Commissioner's approval, but the name of the NAIC buyer's guide to be presented to the applicant at the time of issue must be clearly stated in the submission. All other buyer's guides must be submitted to the Department for approval. The Department is posting an approved NAIC buyer's guide on its website at [www.njdoji.org](http://www.njdoji.org).

• **Disclosure Statement:** An approved separate disclosure statement(s) must include at least those items set forth in Section 4.c.(1) of the Act. Attached to this Bulletin are Fixed Annuity Disclosure Materials for use in writing a fixed annuity disclosure statement. The disclosure statement(s) must be submitted to the Department for approval.

Note: Once approved, the Buyer's Guide and Disclosure Statement(s) need not be included with subsequent submissions, but the submissions should include the form number(s) and approval date of the document(s).

• **Free Look Provision:** All contracts must include a provision or an attached notice providing a minimum 10-day period after the date of receipt of the annuity by the initial owner within which the owner may cancel the annuity and providing that the cancelling owner shall "receive from the insurer a prompt refund of any account value of the annuity, including any contract fees or other charges, by mailing or otherwise surrendering the annuity, together with a written request for cancellation." The Department suggests that this provision or notice contain the quoted language verbatim.

Submissions, including SERFF filings, will be reviewed in accordance with the Department's statutorily-required time frames of 60 days for new submissions and 30 days for resubmissions. Forms submitted for acknowledgement under the "40 States Rule" will be reviewed within the required 30-day time frame. (Please note that 40 States Forms are not eligible for SERFF.)

For previously approved forms, companies may submit (1) a revised cover page (with a new, distinct identifying form number in the lower left hand corner); or (2) an amendment or sticker; or (3) an endorsement in order to include or modify the free-look provision as described above.

- For changes made by a revised cover page, in order to expedite the review, our requirement to re-submit all pages of the contract is being waived.
- For changes made by amendments, stickers or endorsements, the submission must include a contract forms listing of all previously approved contracts to be revised, including the Department's approval date. However, the requirement for a copy of a previously filed base contract that will be used with the amendment or endorsement is waived for submissions made as set forth in this Bulletin.
- Except as noted above, companies are reminded that all form submissions shall be made in accordance with N.J.A.C.11:4-40.1 et seq.

Prior to selling individual fixed deferred and immediate annuity contracts directly to consumers, the Act requires insurers, insurance producers and non-licensed society agents, representatives or members to make reasonable efforts to obtain and record information regarding:

- the consumer's financial status,
- the consumer's tax status,
- the consumer's investment objectives, and
- any other information considered to be relevant to provide reasonable grounds for believing the annuity is suitable for the consumer.

The form containing this information must be signed and dated by the consumer and must also include information advising the consumer that the sale and suitability of annuities is regulated by the Department of Banking and Insurance and that consumers may obtain assistance from the Department by contacting 609-292-7272 or 1-800-446-7467, or by visiting the Department's website at [www.njdobi.org](http://www.njdobi.org).

If the consumer refuses to provide the relevant information to determine the suitability of the product solicited, that fact should be so noted on the form and signed by the consumer prior to the sale of the product.

The suitability form does not require the Commissioner's approval, but copies should be retained and made available to the Department upon request.

Questions concerning form filings may be addressed to Reginald Young, Chief, Life Bureau, 609-292-5427 x50342 or by email at [reginald.young@dobi.state.nj.us](mailto:reginald.young@dobi.state.nj.us). Questions concerning the suitability notice may be addressed to Anne Marie Narcini, Manager, Consumer Protection Services, at 609-292-5316 x50180 or by email at [annemarie.narcini@dobi.state.nj.us](mailto:annemarie.narcini@dobi.state.nj.us). This Bulletin and attachments also appear on the Department's website at [www.njdobi.org](http://www.njdobi.org).

March 9, 2009  
Date

/s/ Steven M. Goldman  
Steven M. Goldman  
Commissioner

inoord/bbPL08Ch88

## **Attachment A- Fixed Annuity Disclosure Materials**

### **How to Complete the Template for a Fixed Annuity Disclosure**

#### **Example 1A: Template for a Fixed Annuity Disclosure**

#### **Example 1B: Sample of a Fixed Annuity Disclosure for use in New Jersey**

### **HOW TO COMPLETE THE TEMPLATE FOR A FIXED ANNUITY DISCLOSURE**

The following is a guide to writing a disclosure for a fixed annuity. It includes general suggestions for writing statements; the types of information that should be covered under each required section, the headings to be used and questions to be answered; and in some cases, provides suggested language that can be used.

Example 1A starting on page 8 shows a fixed annuity disclosure template; Example 1B starting on page 10 is a sample product disclosure for New Jersey. Companies are encouraged to follow the language used in the sample where possible. Disclosure documents should be kept short (preferably two pages).

### **Guide to Writing Disclosure Statements**

- Make a clear distinction about whether a statement is true of all annuities (“an annuity”) or all annuities of this type (“a deferred annuity”) or this product (“this annuity,” “this deferred annuity”).
- In a question, refer to the reader as I (my annuity). In the answer, refer to the reader as you (your annuity). Refer to the company as "we" or use the name of the insurance company. Don't use the generic "insurer" or "company."
- Avoid statements that don't give specific information or don't give the reader information to find specific information. For example, "Interest is credited to your account" is a general statement that isn't very useful. "Interest is credited to your account daily" is a specific statement of information, as is "Page 23 of your contract explains the different ways that interest may be credited to your account."
- Use specific terms (i.e. surrender) from your contract in the disclosure but include a definition in parentheses after.
- Put important terms in bold font the first time you use them. Be selective about what terms you consider important. If too many words are in bold, the technique loses its effectiveness.
- If you refer the reader to the contract for more information, be specific about what information is there and exactly where to find it (e.g. use page numbers or section titles).
- The phrasing "includes" (i.e. "Your options include") suggest there are other options not stated here.  
If you've stated all of the options, say "Your options are." If you plan to add options later, say, "Your options now are."

## **Guide to Writing Disclosure Statements (continued)**

- The term “annuity” is easier for consumers to understand than “contract.” Use "annuity contract" when you're referring the consumer to the written contract. Don't use the word policy to describe an annuity.
- When possible, present information in a bulleted list with a brief description and refer to a specific page number or heading in the contract for more information.

### **SECTION 1: INTRODUCTION**

- Include your company name and name of the product at the top of the page. A company logo also may be inserted.
- Specify if the annuity is single-premium or flexible premium. (Suggested language: This annuity is single-premium, which means you buy it with one premium (payment) or flexible premium, which means you can purchase it with multiple payments).
- Include statements that briefly explain each of the major features of the annuity. (Suggested language: This annuity is fixed, which means it earns a specified interest rate during the guaranteed period. This annuity is deferred, which means payouts begin at a future date. You don't pay taxes on the interest it earns until the money is paid to you.)
- Include a statement that the buyer can use an annuity for lifetime income but it is not meant for short-term goals. (Suggested language: You can use an annuity to save money for retirement and to receive retirement income for life. It is not meant to be used to meet short-term financial goals. You may pay a fee if you take out money before the end of a time period specified by the contract. You also may pay a tax penalty in addition to taxes due on earnings if you withdraw money before 59 1/2.)

### **SECTION 2: THE ANNUITY CONTRACT**

#### **How will the value of my annuity grow?**

- Explain how the annuity earns interest, clearly distinguishing between guaranteed, nonguaranteed, and determinable elements, including their limitations.
- Explain any guarantees and the factors that affect the guarantees.
- Explain how and when interest is credited to the account.

Suggestions for writing statements in this section:

- When you use a table, explain the table. An example using information from the table is a good way to explain the table.

## **SECTION 3: BENEFITS**

### **How do I get income (payouts) from my annuity?**

- Outline choices in payout options, including whether there is a specified maturity date.
- Describe options and restrictions on withdrawing money from the annuity.
- Explain what happens if the annuitant doesn't choose a payout option.

Suggestions for writing statements in this section:

- Use the terms that are in the contract for payout options, but include a clear explanation of each.
- If the contract uses another term for payout, the first time it appears put the other term in the disclosure followed by payout in parenthesis. After the first time, use the generic term payout.
- Use the term premium to refer to money the consumer pays you. Use the term payout to refer to money you pay the consumer.

### **What happens after I die?**

- Describe what happens if the owner (and annuitant if different) dies before and after the company starts to pay income from the annuity and any choices the owner will be asked to make.

## **SECTION 4: OPTIONAL BENEFIT RIDERS AND THEIR FEES**

### **What other benefits can I choose?**

- List all optional riders, briefly describe each, and include either the range or maximum fee charged for each option.
- If no optional benefit riders are offered, include a statement that none are available.

## **SECTION 5: FEES, EXPENSES & OTHER CHARGES**

### **What happens if I take out some or all of the money from my annuity?**

This section should outline:

- The amount of surrender charges and when they are paid.
- Any other charges or adjustments in the amount received when taking money from an annuity.

Suggestions for writing statements in this section:

- If the contract uses another term for surrender charge, the first time it appears in the disclosure, put the other term followed by surrender charge in parentheses. After the first time, use the generic term surrender charge. (Example: ABC Life Insurance Company takes a contingent deferred sales charge (also known as a surrender charge).

- State surrender charges in a table format and include an example to explain the table.

## **SECTION 5: FEES, EXPENSES & OTHER CHARGES (continued)**

■ Include an explanation of the market value adjustment, if applicable. (Suggested language: When you make a withdrawal, we also may increase or decrease the amount you receive based on a market value adjustment (MVA). If interest rates went up after you bought your annuity, the MVA likely will decrease the amount you receive. If interest rates went down, the MVA likely will increase the amount you receive.)

### **Do I pay any other fees or charges?**

■ Outline any other fees or charges that apply to the annuity, including contract fees and annual service fees, the amounts, and when and how they are collected.

Suggestions for writing statements in this section:

- When you use a table, include an example to explain the table.

## **SECTION 6: TAXES**

### **How will payouts and withdrawals from my annuity be taxed?**

This section should outline:

■ The meaning of tax-deferred (Suggested language: This annuity is tax-deferred, which means you don't pay taxes on the interest it earns until the money is paid to you. When you take payouts or make a withdrawal, you pay ordinary income taxes on the earned interest. You also pay a 10% federal income tax penalty on earnings you withdraw before age 59 1/2.)

■ If your company takes premium taxes from withdrawals or payouts, include a statement describing the deduction. (Suggested language: If your state imposes a premium tax, it will be deducted from the money you receive.)

■ That one tax-deferred annuity can be exchanged for another without paying taxes on earnings. (Suggested language: You can exchange one tax-deferred annuity for another without paying taxes on the earnings when you make the exchange. Before you do, compare the benefits, features, and costs of the two annuities.)

### **Does buying an annuity in a retirement plan provide extra tax benefits?**

■ Explain that there are no tax advantages to buying an annuity as part of a retirement plan. (Suggested language: Buying an annuity within an IRA, 401(k), or other tax-deferred retirement plan doesn't give you any extra tax benefits. Choose your annuity based on its other features and benefits as well as its risks and costs, not its tax benefits.)

## **SECTION 7: OTHER INFORMATION**

### **What else do I need to know?**

All disclosures should include the following statements, modified as needed to match your situation.

## **SECTION 7: OTHER INFORMATION (continued)**

### **Changes to your contract**

We may change your annuity contract from time to time to follow federal or state laws and regulations. If this happens, we'll tell you about the changes in writing.

### **Compensation**

We pay the agent, broker, or firm for selling the annuity to you. They may receive additional compensation for selling this annuity contract than for selling other annuity contracts.

### **Free Look**

Please include State and Company specific information about free look.

Include in this section other important information that doesn't appear elsewhere.

### **What should I know about the insurance company?**

Provide a general description of the company as well as all contact information, including an address, phone number, website, and e-mail address (as applicable). You also may consider including financial strength ratings.

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**All disclosures should include the statement:** This is a summary document and not part of your contract with the insurer.



## EXAMPLE 1A

### Template for a Fixed Annuity Disclosure

Example 1A shows how to group disclosure material into sections and in two-column format. Disclosure documents should be short (preferably two pages). The template also includes the section headings that are to be used, the questions that need to be answered, and provides direction. Refer to the accompanying instructions for more information about how to complete the template and for suggested language.

#### Section 1

##### COMPANY NAME]

##### [PRODUCT NAME] Disclosure

[State Company name and name of product. Specify if the annuity is a single- or flexible- premium annuity. Include statements that briefly explain major features and how it accumulates value. Disclose that the annuity is not meant to be used to meet short-term goals. Suggested language provided in accompanying instructions.]

#### Section 2

##### THE ANNUITY CONTRACT

##### How will the value of my annuity grow?

[Explain how the annuity earns interest and how and when interest is credited to the account. Distinguish between guaranteed, non-guaranteed, and determinable elements.]

#### Section 3

##### BENEFITS

##### How do I get income (payouts) from my annuity?

[Outline various payout options and include if there is a specified maturity date. describe options and restrictions on withdrawing money, as well as what happens when a payout option is not selected.]

##### What happens after I die?

[Describe what happens if death occurs before and after income payments start and any choices the annuity owner will be asked to make.]

#### Section 4

##### OPTIONAL BENEFIT RIDERS AND THEIR FEES

##### What other benefits can I choose?

[List and describe all optional riders. include either the range of fees or maximum fee charged for each.]

#### Section 5

##### FEES, EXPENSES AND OTHER CHARGES

##### What happens if I take out some or all of the money from my annuity?

[State surrender charges and provide example. Include explanation of market value adjustment, if applicable. Suggested language provided in accompanying instructions.]

##### Do I pay any other fees or charges?

[Outline other fees that apply.]

#### Section 6

##### TAXES

##### How will payouts and withdrawals from my annuity be taxed?

[Describe meaning of tax-deferred. Include statement describing any deduction taken for premium taxes. Explain tax treatment of exchanges. Suggested language provided in accompanying instructions.]

##### Does buying an annuity in a retirement plan provide extra tax benefits?

[Explain that there are no additional tax benefits. Suggested language provided in accompanying instructions.]

#### Section 7

##### OTHER INFORMATION

##### What else do I need to know?

##### Changes to your contract

[Include a statement explaining that the contract

owner will be notified in writing of any changes to the contract. Suggested language provided in accompanying instructions.]

**Compensation**

[Include a statement explaining that the seller may receive additional compensation for selling this annuity. Suggested language provided in accompanying instructions.]

**Free Look**

[Include State and Company specific information about free look. Suggested language provided in

accompanying instructions.]

**What should I know about the insurance company?**

Provide other relevant Company information, including address, phone number, and website.

Include the statement: *This is a summary document and not part of your contract with the insurer.*]

EXAMPLE 1B

**Sample of a Fixed Annuity Disclosure for use in New Jersey**

*Example 1B is a sample of how a final disclosure document might look. This is only a sample and is not intended to serve as a model disclosure for all types of annuities. Disclosure documents for each company and product will vary. Disclosure documents should be kept short (preferably two pages).*

**Fixed Single-Premium Deferred Annuity Disclosure**

This document reviews important points to think about before you buy this XYZ Insurance Company annuity. This annuity is single-premium which means you buy it with one premium (payment). It is a fixed annuity which means it earns a specified interest rate during the guaranteed period. This annuity is **deferred**, which means payouts begin at a future date. You don't pay taxes on the interest it earns until the money is paid to you.

You can use an annuity to save money for retirement and to receive retirement income for life. It is **not** meant to be used to meet short-term financial goals.

**If you have questions about this annuity, please ask your agent, broker or advisor, or contact a company representative at 800-123-4567.**

## THE ANNUITY CONTRACT

### How will the value of my annuity grow?

Your annuity earns **tax-deferred** interest at a **guaranteed minimum rate** for a **guaranteed period**.

When you buy your annuity, you choose a guaranteed period of 5, 6, 7, 8, 9, or 10 years. The guaranteed rate depends on the guaranteed period you choose and current interest rates in the market. Interest compounds daily and is credited to your annuity account on the last day of each month.

Within 30 days after the end of each guaranteed period, you choose a new guaranteed period or surrender (cancel and withdraw the money from) your annuity. If you do nothing, a new guaranteed period begins that is the same length as the one before. The new guaranteed rate depends on the length of the new guaranteed period and current market rates. Interest compounds daily at the new rate in the new period.

**The account value of your annuity cannot go down.**

## BENEFITS

### How do I get income (payouts) from my annuity?

When you apply for your annuity, you choose a payout commencement date—when you start to get income from your annuity. You also choose how to get the income—the payout option. Your choices now are:

■ **Life:** Guarantees income for as long as you live.

■ **Joint and survivor life:** Guarantees income for as long as you or your joint annuitant (usually a spouse or civil union partner) live.

■ **Life income with period certain:** Guarantees income for as long as you live. If you die within the "period certain" (usually 10 or 20 years), it pays income to your beneficiary for the rest of the period.

■ **Designated period of time:** Pays income for that period.

■ **Lump sum:** one payout.

You may change both the start date and the payout option up until payout begins.

If you don't choose an annuity payout option, we start payouts on [FILL IN DATE] and continue them for [FILL IN DURATION].

Once payouts begin, you can't surrender (cancel) your annuity.

### What happens after I die?

If you die before we start to pay you income from your annuity, we pay the value of your annuity to your beneficiary. If you die after the payouts start, depending on the type of payout you chose, we pay the remaining value in the annuity, if any, to your beneficiary.

## OPTIONAL BENEFIT RIDERS AND THEIR FEES

### What other benefits can I choose?

This contract also offers other benefits for an extra cost.

Your choices and the fees charged are described below. You will pay a fee for each option you choose every year you own the annuity. The annual cost will be reflected in a lower rate credited to your account balance than you would have received without the riders.

<b>Annual Fees for Available Optional Benefit Riders</b>	<b>Maximum</b>
<u>Principal Guarantee Rider</u>	.10%

If you surrender your contract before the end of the guarantee period, this rider guarantees the amount you receive will never be less than your initial premium payment.

<u>Additional Liquidity Benefit</u>	.10%
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Allows you to withdraw up to 10% annually without charge.

## FEES, EXPENSES & OTHER CHARGES

### What happens if I take out some or all of the money from my annuity?

You can't take any of the money out of your annuity after the payout begins. Before it begins, you can take out all of your annuity's value (**full surrender**) or part of it (**partial surrender**). You can take a partial surrender as long as the amount you take is at least \$1,000 and you leave at least \$5,000 in the account.

We take a **contingent deferred sales charge (also known as a "surrender charge")** from amounts you withdraw before the end of the seventh contract year. Here's how the charge is calculated:

<u>Contract year</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8+</u>
<u>Surrender charge</u>	7%	6%	5%	4%	3%	2%	1%	0

*Example:* If you withdraw \$5,000 from your annuity in the third contract year, your surrender charge is  $\$5,000 \times 0.05 = \$250$ . If you take out any amount after the end of the seventh contract year, there's no charge.

When you make a withdrawal, we also may increase or decrease the amount you receive based on a **market value adjustment (MVA)**. If interest rates went up after you bought your annuity, the MVA likely will decrease the amount you receive. If interest rates went down, the MVA likely will increase the amount you receive.

*Exceptions:* In some cases, we may waive the surrender charge or the market value adjustment. For example, there's no surrender charge if we pay the remaining value of your annuity to a beneficiary after your death.

### Do I pay any other fees or charges?

No. There aren't any other fees or charges on this annuity. Also, you pay only one premium for your annuity.

## TAXES

### How will payouts and withdrawals from my annuity be taxed?

This annuity is tax-deferred, which means you don't pay taxes on the interest it earns until the money is paid to you. When you take payouts or make a withdrawal, you pay ordinary income taxes on the earned interest. You also pay a 10% federal income tax penalty on earnings you withdraw before age 59 1/2. If your state imposes a premium tax, it will be deducted from the money you receive.

You can exchange one tax-deferred annuity for another without paying taxes on the earnings when you make the exchange. Before you do, compare the benefits, features, and costs of the two annuities. You may pay a surrender charge if you make the exchange during the first seven years you own the annuity. Also, you may pay a surrender charge if you make withdrawals from the new annuity during the first years you own it.

**Does buying an annuity in a retirement plan provide extra tax benefits?**

Buying an annuity within an IRA, 401(k), or other tax deferred retirement plan doesn't give you any extra tax benefits. Choose your annuity based on its other features and benefits as well as its risks and costs, not its tax benefits.

**OTHER INFORMATION**

**What else do I need to know?**

**Changes to your contract**

We may change your annuity contract from time to time to follow federal or state laws and regulations. If we do, we'll tell you about the changes in writing.

**Compensation**

We pay the agent, broker, or firm for selling the annuity to you. They may receive more compensation for selling this annuity contract than for selling other annuity contracts.

**Free look**

The owner shall be given at least a 10 daynotice of cancellation to return the annuity and receive a prompt refund of the premium paid, including any contract fees or charges.

**What should I know about the insurance**

**Company?**

XYZ Life Insurance Company offers a wide variety of retirement and financial security products, including life insurance, annuities, long-term care, and disability income insurance. We also are a leading provider of products and services to workplace-based pension plans—both defined contribution and defined benefit plans. Our

financial strength ratings are: A+ (A.M. Best); AA (S&P); Aa3 (Moody's); and AA+ (Fitch).

XYZ Life Insurance Company  
123 Main Street  
Your Town USA  
Telephone: 800-123-4567  
<http://www.xyzlife.com>

This is a summary document and not part of your contract with the insurer.