



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

- B. "Interest credits" means all interest that is credited to the contract.
- C. "Separate account" means a separate account established pursuant to Section [insert section], or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.
- D. "Commissioner" means the Insurance Commissioner of [insert state].

## **Section 5. Authority of Insurers**

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

- A. Licensing and Approval to do Business.
  - (1) No company shall deliver or issue for delivery modified guaranteed annuities within this state unless it is licensed or organized to do life insurance or annuity business in this state. The commissioner must be satisfied that its condition or method of operation in connection with the issuance of these contracts will not render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things, the history and financial condition of the company; the character, responsibility and fitness of the officers and directors of the company; and the law and regulation under which the company is authorized in the state of domicile to issue these annuities.
  - (2) If the company is a subsidiary of an admitted life insurance company, or affiliated with such a company by common management or ownership, it may be deemed by the commissioner to have satisfied the provision of Paragraph (1) if either the subsidiary or the admitted life company satisfies the provisions of Paragraph (1). Companies licensed and having a satisfactory record of doing business in this state for a period of at least three (3) years may be deemed to have satisfied the commissioner with respect to Paragraph (1) above.
  - (3) Before a company shall deliver or issue for delivery modified guaranteed annuities within this state, it shall submit to the commissioner a general description of the kinds of annuities it intends to issue. If requested by the commissioner, the following shall be submitted:
    - (a) A copy of the statutes and regulations of its state of domicile under which it is authorized to issue modified guaranteed annuities; and
    - (b) Biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

B. Use of Sales Materials.

- (1) An insurer authorized to sell modified guaranteed annuities in this state shall not use any sales material, advertising material or descriptive literature or other materials of any kind in connection with the sale of modified guaranteed annuities in this state that is false, misleading, deceptive or inaccurate.
- (2) Illustrations of benefits payable under a modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience; except that hypothetical assumed interest credits may be used to illustrate possible levels of benefits.
- (3) Before an insurer shall deliver or issue for delivery a modified guaranteed annuity contract in this state, the commissioner may require the filing of a copy of any prospectus or other sales material to be used in connection with the marketing of the insurer's modified guaranteed annuity contract. The sales material shall clearly illustrate that there can be both upward and downward adjustments due to the application of the market value adjustment formula in determining nonforfeiture benefits.

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

- (1) A separate account annual statement, which shall include the business of its modified guaranteed annuities; and
- (2) Such additional information concerning its modified guaranteed annuity operations or separate accounts as the commissioner shall deem necessary.

D. Authority of Commissioner to Disapprove.

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

**Section 6. Filing of Contracts**

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

**Section 7. Modified Guaranteed Annuity Contract Requirements**

A. Mandatory Contract Benefit and Design Requirements (to)-5.15(h)-t(e)-1-0.001 nre co6 Td()TJEMC P NAICID 29 (

- (2) A modified guaranteed annuity contract calling for the payment of periodic stipulated payments shall not be delivered or issued for delivery in this state unless it contains in substance the following provisions:
  - (a) A provision that there shall be a grace period of thirty (30) days or one month during which the contract shall remain in force and, within which any payment due to the insurer other than the first may be made. The contract may include a statement of the basis for determining the date as of which any such payment received during the grace period shall be applied to produce the values under the contract.
  - (b) A provision that, at any time within one year from the date of default, the contract may be reinstated upon payment to the insurer of such overdue payments as required by the contract, and of all indebtedness to the insurer on the contract, including interest. Reinstatement may not occur if the cash value has been paid. The contract may include a statement of the basis for determining the date as of which the amount to cover the overdue payments and indebtedness shall be applied to produce the values under the contract.
  - (c) A provision that, to the extent set out in the contract, the portion of the assets of any separate account that equal the reserves and other contract liabilities of the account shall not be chargeable with liabilities arising out of any other business of the company.
- (3) The market-value adjustment formula, used in determining nonforfeiture benefits, shall be stated in the contract and shall be applicable for both u



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

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

- (5) The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract.
- (6) The net considerations for a given contract year used to define the minimum nonforfeiture amount in Paragraph (3) shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year.
- (7) Any paid-up annuity benefit available under a modified guaranteed annuity contract shall be such that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.
- (8) For modified guaranteed annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the insurer. The death benefit under these contracts shall be at least equal to the cash surrender benefit.
- (9) Any modified guaranteed annuity contract which does not provide cash surrender benefits, or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the annuity commencement date shall include a statement in a prominent place in the contract that these benefits are not provided.
- (10) Despite the requirements of this section, a modified guaranteed annuity contract may provide under the situations specified in Subparagraph (a) or (b) below that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount, and by this payment be released of any further obligation under the contract:
  - (a) If, at the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than \$2,000, or would provide an income the initial amount of which is less than \$20 per month; or
  - (b) If, prior to the time the annuity becomes payable under a periodic payment contract, no considerations have been received under the contract for a period of two (2) full years and both the total considerations paid prior to that period, reduced to reflect any partial withdrawals from or partial surrenders of the







**Section 13. Separability**