CR 89-205

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Revisor of Statutes
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MAR 14 1990
4:00p
SECRETARY OF STATE

STATE OF WISCONSIN)
)
OFFICE OF THE COMMISSIONER OF INSURANCE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Robert D. Haase, Commissioner of Insurance and custodian of the official records of said Office, do hereby certify that the annexed order renumbering and amending s. Ins 2.13 (2) (a) and (b) and (7) to (9); amending s. Ins 2.13 (1), (2) (title), (3) (title), (a) (intro.) and 2 (b), (c) (intro.), 2 and 3, (4) (a) to (g), (5) (a), (b) 2, (d) and (e) and (6); and creating s. Ins 2.13 (2) (intro.) and (c) to (g), (7) to (9) and (13), relating to variable contracts, modified guaranteed life insurance policies and modified guaranteed annuity contracts was issued by this Office on March 14, 1990.

I further certify that said copy has been compared by me with the original on file in this Office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 14th day of March, 1990.

89-205

Robert D. Haase
Commissioner of Insurance

10431T

5-1-90

ORDER OF THE COMMISSIONER OF INSURANCE

RENUMBERING AND AMENDING, AMENDING AND CREATING A RULE

To renumber and amend s. Ins 2.13 (2) (a) and (b) and (7) to (9); to amend s. Ins 2.13 (1), (2) (title), (3) (title), (a) (intro.) and 2 (b), (c) (intro.), 2 and 3, (4) (a) to (g), (5) (a), (b) 2, (d) and (e) and (6); and to create s. Ins 2.13 (2) (intro.) and (c) to (g), (7) to (9) and (13), relating to variable contracts, modified guaranteed life insurance policies and modified guaranteed annuity contracts.

Statutory Authority: s. 601.41 (3), Stats.

Statutes Interpreted: s. 611.25 and 632.45, Stats.

This rule has two main purposes: to update and make changes in s. Ins 2.13 so that the rule is current and in the drafting style required by s. 227.14 (1), Stats.; and to allow life insurers to offer modified guaranteed life insurance policies and modified guaranteed annuities subject to the conditions set forth in the rule.

Modified guaranteed life insurance policies and annuities are a hybrid between guaranteed contracts and variable contracts. The modified guaranteed contracts offer a guaranteed rate of return as long as the insurance policy or annuity contract is held by the policyholder for a specified time period. If held for a shorter time period, the contract provides nonforfeiture values based on a market value adjustment formula.

The rule essentially adopts the National Association of Insurance Commissioners' (NAIC) model regulations on modified guaranteed life insurance policies and annuity contracts. The NAIC adopted these model regulations in the mid-1980s. As of October 1988, California, Connecticut and New York had adopted the model regulations.

The market value adjustment formula used by the insurer to determine the cash value must be stated in the contract. When the contract is filed with the commissioner of insurance, it must be accompanied by an actuarial statement indicating the basis for the formula and stating that the formula provides reasonable equity to both the contract holder and the insurance company. The formula must provide for both upward and downward adjustments.

In order to write modified guaranteed contracts, an insurance agent must be licensed to sell variable contracts. The insurer must provide an annual report to the contract holder, showing account values and surrender values.

As with other variable contracts, the assets backing a modified guaranteed contract are placed in a separate account, and are valued at market. Matching of asset and liability cash flow is taken into account by the "reserve liabilities" requirement contained in the rule.

These separate accounts will be subject to the investment laws applicable to the insurer's general asset account. However, the market value adjustment feature will enable insurers to invest funds in longer-term assets without fear of capital losses and surrender prior to maturity.

Modified guaranteed contracts may provide higher yields to policyholders. Since longer-term assets generally are higher yielding than shorter-term investments, interest rates credited to policyholders can be higher. The market value adjustment feature is also an attempt to protect companies from capital losses due to fluctuation in market interest rates during the term of the contract and thus contribute to the long-term solvency of insurers issuing these contracts. In addition, the ability to invest in longer-term assets will permit insurance companies to increase the safety of their investments through the purchase of mortgages, corporate bonds and other long-term investments.

SECTION 1. Ins 2.13 (1) is amended to read:

Ins 2.13 (1) PURPOSE. This ~~rule~~ section creates standards for establishing separate accounts and for issuing contracts on a variable basis, ~~both~~ as provided by ss. 611.25 and 632.45 (1), Stats.

SECTION 2. Ins 2.13 (2) (title) is amended to read:

Ins 2.13 (2) (title) DEFINITIONS.

SECTION 3. Ins 2.13 (2) (intro.) is created to read:

Ins 2.13 (2) (intro.) In this section:

SECTION 4. Ins 2.13 (2) (a) and (b) are renumbered Ins 2.13 (2) (b) and (a) and, as renumbered, are amended to read:

Ins 2.13 (2) (a) ~~"Agent," when used in this rule, shall mean any~~ "Agent" means a person who sells or offers to sell any contract on a variable basis.

(b) ~~The term "contract~~ "Contract on a variable basis" or "variable contract~~," when used in this rule, shall mean any~~" means a policy or contract which provides for insurance or annuity benefits which may vary according to the investment experience of any separate account ~~or accounts~~ maintained by the insurer as to ~~such~~ the policy or contract, as provided for in s. 632.45 (1), Stats., including contracts defined in pars. (e) and (f).

SECTION 5. Ins 2.13 (2) (c) to (g) are created to read:

Ins 2.13 (2) (c) "Interest credits" means all interest that is credited to a policy or contract.

(d) "Issue" means to issue for delivery or deliver.

(e) "Modified guaranteed annuity" means a deferred annuity contract, the underlying assets of which are held in a separate account and the values of which are guaranteed if held for specified periods, containing nonforfeiture values based on a market-value adjustment formula if held for shorter periods, which formula may or may not reflect the value of assets held in the separate account.

(f) "Modified guaranteed life insurance policy" means an individual policy of life insurance, the underlying assets of which are held in a separate account and the values of which are guaranteed if held for specified periods, containing nonforfeiture values based on a market-value adjustment formula if held for shorter periods, which formula may or may not reflect the value of assets held in the separate account.

(g) "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

SECTION 6. Ins 2.13 (3) (title), (a) (intro.) and 2, (b), (c) (intro.), 2 and 3, (4) (a) to (g), (5) (a), (b) 2, (d) and (e) and (6) are amended to read:

Ins 2.13 (3) (title) QUALIFICATION OF INSURER TO ISSUE VARIABLE CONTRACTS. (a) (intro.) No ~~company-shall-deliver-or~~ insurer may issue ~~for delivery~~ variable contracts ~~within~~ in this state unless:

2. (intro.) The commissioner is satisfied that its condition or method of operation in connection with the issuance of ~~such~~ variable contracts will not render its operation hazardous to the public or its policyholders in this state. In determining the qualification of ~~a-company~~ an insurer requesting authority to ~~deliver-such~~ issue variable contracts ~~within~~ in this state, the commissioner shall consider among other things:

a. The history and financial condition of the ~~company~~ insurer;

b. The character, responsibility and fitness of the officers and directors of the ~~company,~~ insurer; and

c. The law and regulation under which the ~~company~~ insurer is authorized in the state of domicile to issue variable contracts.

(b) If the ~~company~~ insurer is a subsidiary of an admitted life insurance company, or affiliated with ~~such~~ an admitted life insurance company by common management or ownership, ~~it-may-be-deemed-by~~ the commissioner may deem it to have satisfied ~~the-provisions-of~~ par. (a) 2~~.~~ if either it or ~~such~~ the admitted life insurance company satisfies the ~~aforementioned~~ provisions~~;~~

~~provided,-further,-that-companies~~ of par. (a) 2. The commissioner may deem any licensed ~~and-having~~ insurer which has a satisfactory record of doing business in this state for a period at least 3 years ~~may-be-deemed~~ to have satisfied the ~~commissioner-with-respect-to~~ provisions of par. (a) 2.

(c) (intro.) Before any ~~company-shall-deliver-or-issue-for-delivery~~ insurer issues variable contracts ~~within~~ in this state, it shall submit to the commissioner:

2. 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 contracts; and

3. If requested by the commissioner, biographical data with respect to its officers and directors ~~of-the-company~~.

(4) (a) A domestic ~~company~~ insurer issuing variable contracts shall establish one or more separate accounts pursuant to s. 611.25, Stats., subject to the following provisions:

1. Except as ~~hereinafter~~ provided in this subsection, an insurer may invest and reinvest amounts allocated to and accumulating in any separate account ~~and-accumulation-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~~;-provided,-that-to-the extent-that-the-company's~~. This subdivision applies only if the insurer maintains in any separate account its reserve liability with regard to ~~a.~~ benefits guaranteed as to ~~dollar~~ amount and duration~~,~~ and ~~b.~~ funds guaranteed as to principal ~~amount~~ or ~~stated~~ rate of interest ~~is-maintained-in-any separate-account~~, and a portion of the assets of ~~such~~ the separate account at least equal to ~~such~~ the reserve liability ~~shall-be,-except-as~~, or another

amount approved by the commissioner ~~may-otherwise-approve~~, is invested in accordance with the laws of this state governing the investments of life insurance companies. ~~The~~ No investments in ~~such~~ a separate account ~~or accounts-shall-not~~ may be taken into account in applying the investment limitations applicable to the investments of the ~~company~~ insurer.

2. With respect to 75% of the market value of the total assets in a separate account, no ~~company-shall~~ insurer may 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~~ the purchase or acquisition, the market value of ~~such~~ the investment, together with prior investments of ~~such~~ the separate account in ~~such~~ the security taken at market, would exceed 10% of the market value of the assets of ~~said~~ the separate account~~;-provided,-however,-that-the~~. The commissioner may waive ~~such~~ this limitation if~~,-in-his-opinion,-such~~ he or she believes that the waiver will not render the operation of ~~such~~ the separate account hazardous to the public or the insurer's policyholders in this state.

3. No ~~company-shall~~ insurer may, ~~whether~~ either for its separate accounts or otherwise, invest in the voting securities of a single issuer in an amount ~~in-excess-of~~ exceeding 10% of the total issued and outstanding voting securities of ~~such~~ the issuer ~~provided-that-the-foregoing-shall~~. This limitation does 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 interests in ~~such~~ the accounts.

4. The limitations provided in subds. 2~~,~~ and 3~~,-shall~~ do not apply to the investment with respect to a separate amount in the securities of an investment company registered under the ~~Investment-Company-Act~~ investment

company act of 1940, 29 U.S.C. ss. 80a-1 to 80a-64, as amended ~~provided that~~, if the investments of ~~such~~ the investment company comply in substance with subds. 2~~,~~ and 3.

(b) Unless otherwise approved by the commissioner, an insurer shall value 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~~ the separate account~~; provided~~, except that the insurer shall value the portion of the assets of ~~such~~ the separate account equal to the ~~company's~~ insurer's reserve liability with regard to the benefits ~~guaranteed~~ and funds ~~guaranteed referred to~~ described in par. (a) 1~~., a., and b.~~, if any, ~~shall be valued~~ in accordance with the rules otherwise applicable to the ~~company's~~ insurer's assets.

(c) ~~If and to~~ To the extent ~~so~~ provided under ~~the~~ any applicable ~~contracts, that~~ contract, no portion of the assets of any ~~such~~ separate account established under this subsection equal to the reserves and other applicable contract liabilities ~~with respect to such~~ of the account ~~shall not be~~ are chargeable with liabilities arising out of any other business the ~~company~~ insurer may conduct.

(d) (intro.) Notwithstanding any other provision of law, ~~a company~~ an insurer may:

1. 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~~ investment company act of 1940, 15 U.S.C. ss. 80a-1 to 80a-64, as amended, ~~and~~ which are held in ~~such~~ separate

accounts in accordance with instructions from persons having interests in ~~such~~ the accounts ratably as determined by the ~~company,~~ insurer; or

2. a. With respect to any separate account registered with the securities and exchange commission as a management investment company, establish for ~~such~~ the account a committee, board~~,~~ or other body, the members of which may or may not be otherwise affiliated with ~~such-company~~ the insurer and may be elected to ~~such~~ membership by the vote of persons having interests in ~~such~~ the account ratably as determined by the ~~company~~ insurer. ~~Such~~

b. A committee, board~~,~~ or other body established under subd. 2. a may ~~have-the-power,-exercisable~~, alone or in conjunction with others, ~~to~~ manage ~~such~~ the separate account and the investment of its assets.

c. ~~A-company,~~ An insurer or a committee, board~~,~~ or other body established under subd. 2. a may make ~~such~~ other provisions ~~in-respect-to~~ for any ~~such~~ separate account ~~as-may-be-deemed-appropriate~~ established under this subsection in order to facilitate compliance with ~~requirements-of-any~~ federal or state law ~~now-or-hereafter-in-effect;-provided-that~~, if the commissioner approves ~~such~~ the provisions as not hazardous to the public or the ~~company's~~ insurer's policyholders in this state.

(e) ~~No-sale,-exchange,-or-other~~ 1. An insurer may not 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~~ a separate ~~accounts-unless,-in-case-of-a~~ account except that an insurer may transfer assets 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~~.

2. An insurer may transfer~~, whether into or from a separate account,~~ ~~is made~~ assets under subd. 1 only as follows:

~~1.~~ a. By a transfer of cash~~,~~; or

~~2.~~ b. By a transfer of securities having a ~~valuation which could be~~ readily determined ~~in the marketplace, provided that such~~ market value, if the transfer ~~of securities~~ is approved by the commissioner. ~~The~~

3. Notwithstanding subd. 2, the commissioner may authorize other transfers among ~~such~~ accounts if~~, in his opinion, such~~ he or she believes that the transfers would not be inequitable.

(f) The ~~company~~ insurer shall maintain in each ~~such~~ separate account established under this subsection assets with a value at least equal to the reserves and other contract liabilities with respect to ~~such~~ the account, except as ~~may~~ otherwise ~~be~~ approved by the commissioner.

(g) Section 611.60, Stats., ~~shall apply~~ applies to the members of any separate account's committee, board~~,~~ or other ~~similar~~ body established under par. (d) 2. a. No officer or director of ~~such company~~ the insurer nor any member of ~~the~~ a committee, board~~,~~ or body of a separate account ~~shall~~ may receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of ~~such~~ the separate account.

(5) (a) No variable contract may be issued ~~or delivered~~ in this state until the commissioner has approved the form or until the form and rates have been filed with the commissioner for 30 days.

(b) 2. A general description of ~~the form(s)~~ each form.

(d) ~~All forms should be completed with~~ Each form shall include hypothetical data ~~to show their use and should include~~ showing its use, a correct table of values~~. Variable~~ and an explanation of all variable information ~~in forms should be explained~~.

(e) ~~An~~ Each filing shall include an actuarial statement of methods used to calculate values in the contract ~~should-be-included~~.

(6) (a) Any variable contract ~~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~~ insurer in determining the ~~dollar~~ amount of ~~such~~ the variable benefits. ~~Any-such~~ Each variable contract, including a group contract and any certificate issued ~~thereunder~~ under a group contract, shall state that ~~such-dollar~~ the amount of benefits will vary to reflect investment experience and shall contain on its first page, in a prominent position, a clear statement ~~to-the-effect~~ that the benefits ~~thereunder~~ under the contract are on a variable basis~~,-with-a-statement-where~~ and the location in the contract of the details of the variable provisions ~~may-be-found~~.

(b) ~~Illustrations~~ No illustration of benefits payable under any variable contract ~~providing-benefits-payable-in-variable-amounts-shall-not~~ may include ~~projections~~ a projection of past investment experience into the future or ~~attempted-predictions~~ a prediction of future investment experience~~;~~ ~~provided-that-nothing-contained-herein-is-intended-to~~. This paragraph does not prohibit the use of hypothetical assumed rates of return to illustrate possible levels of ~~annuity-payments~~ benefits.

(c) No insurer may issue an individual variable annuity contract calling for ~~the-payment-of~~ periodic stipulated payments ~~shall-be-delivered-or issued-for-delivery~~ in this state unless ~~it~~ the contract contains in substance all of the following provisions or provisions which in the opinion of the commissioner are more favorable to the ~~holders-of-such-contracts~~ holder of the contract:

1. ~~A-provision-that-there-shall-be-a~~ A grace period ~~of-grace~~ of 30 days or ~~of~~ one month~~,~~ within which the holder may make any stipulated payment ~~to~~, other than the first payment, due the insurer ~~falling-due-after the-first-may-be-made,-during-which-period-of~~. During the grace period the contract shall continue in force. The contract may include a statement of the basis ~~for-determining~~ on which the insurer determines the date ~~as-of-which~~ that it will apply any ~~such~~ stipulated payment received during the grace period ~~of-grace~~ to produce the values under the contract arising ~~therefrom;~~ from the application of the payment.

2. A ~~provision-that,~~ right to reinstatement of the contract at any time within 3 years 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~~ the overdue payments as required by the contract, and of all indebtedness ~~to-the-insurer~~, including interest, on the contract~~, including-interest~~. The right to reinstatement does not apply if the insurer has paid the cash surrender value of the contract. The contract may include a statement of the basis ~~for-determining~~ on which the insurer determines the date ~~as-of-which~~ that it will apply the amount to cover ~~such~~ the overdue payments and indebtedness ~~shall-be-applied~~ to produce the values under the contract arising ~~therefrom;~~ from the application of the payment.

3. ~~A-provision-specifying-the~~ The options available in the event of default in a periodic stipulated payment. ~~Such~~ The options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash~~,-the~~. The amount of ~~such~~ the paid-up

annuity ~~being~~ shall be determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.

(d) Any individual variable annuity contract ~~delivered-or~~ issued ~~for delivery~~ in this state shall stipulate the expense, mortality~~,~~ and investment increment factors to be used in computing the ~~dollar~~ amount of variable benefits or other contractual payments or values ~~thereunder~~, and may guarantee that no expense ~~and/~~or mortality results, or both, ~~shall-not~~ will adversely affect ~~such-dollar-amounts~~ the amount of benefits. ~~"Expense,"-as-used-in-this paragraph,~~ The expense factors may exclude some or all taxes, as stipulated in the contract. In computing the ~~dollar~~ amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

1. ~~The~~ No annual net investment increment assumption ~~shall-not~~ may exceed 5%, except with the approval of the commissioner; and

2. To the extent that the level of benefits may be affected by mortality results, the insurer shall determine the mortality factor ~~shall-be determined~~ from the ~~Annuity-Mortality-Table-for-1949,-Ultimate,~~ 1983 Table A, as defined in s. Ins 2.30 (2) (a), or any modification of that table not having a higher mortality rate at any age.

(e) The insurer shall establish the reserve liability for variable annuities ~~shall-be-established-pursuant-to-the-requirements-of~~ under s. 623.06, Stats., in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

SECTION 7. Ins 2.13 (7) to (9) are renumbered Ins 2.13 (10) to (12) and Ins 2.13 (10) (a) (intro.) and 1 and (b), (11) and (12), as renumbered, are amended to read:

Ins 2.13 (10) (a) (intro.) ~~Any-company~~ Each insurer issuing individual variable contracts ~~providing-benefits-in-variable-amounts~~ shall mail to ~~the~~ each contractholder, at least once in each contract year after the first, at his or her last address known to the ~~company~~ insurer, a statement ~~or statements~~ reporting the investments held in the separate account and, in the case of contracts under which payments have not yet commenced, a statement reporting either of the following as of a date not more than 4 months ~~previous to~~ before the date of mailing:

1. The number of accumulation units credited to ~~such-contracts~~ the contract and the dollar value of a unit~~,-or~~.

(b) The ~~company~~ insurer shall submit annually to the commissioner a statement of the business of each of its separate ~~account(s)~~ accounts in ~~such~~ the form ~~as~~ required by the annual statement form designated as Life and Accident and Health~~--Separate-Account-business-(22-46),--(See-s.-Ins-7.01-(5)(e))~~ Association Edition-Variable Life Insurance Separate Account.

(11) FOREIGN COMPANIES. If the law or regulation in the place of domicile of a foreign ~~company~~ insurer provides ~~a-degree-of~~ protection to the policyholders and the public which is substantially equal to that provided by this ~~rule~~ section, the commissioner, to the extent ~~deemed~~ he or she considers appropriate ~~by-him-in-his--discretion~~, may consider compliance with ~~such~~ that law or regulation as compliance with this ~~rule~~ section.

(12) AGENT QUALIFICATIONS. Any person selling or offering for sale a variable contract ~~must~~ shall have a valid license ~~as-described-in~~ under s. Ins 6.59, authorizing the solicitation of life insurance as listed in s. Ins 6.50 (2) (a)~~;~~, and shall have passed any ~~one~~ of the following alternative security examinations administered by the National Association of Securities Dealers:

~~1.~~ (a) General Securities Registered Representation Examination.

~~2.~~ (b) Investment Company Products/Variable Contracts Limited Representative Qualification Examination.

~~3. SECO/~~ (c) NASD Non-Member General Securities Examination.

~~4.~~ (d) General Securities Principal Qualification.

~~5.~~ (e) Investment Company Products/Variable Contracts Limited Principal Qualification Examination.

SECTION 8. Ins 2.13 (7) to (9) are created to read:

Ins 2.13 (7) MODIFIED GUARANTEED LIFE INSURANCE. (a) An insurer that issues modified guaranteed life insurance policies in this state shall comply with all of the following requirements:

1. The insurer shall bear mortality and expense risks. The mortality and expense charges shall be subject to the maximum stated in the contract.

2. For scheduled premium policies, the insurer shall provide a minimum death benefit in an amount at least equal to the initial face amount of the policy as long as premiums are paid, subject to par. (d) 2.

3. The insurer shall determine the cash value of each policy at least monthly. Each policy shall describe the method of computing cash values and other nonforfeiture benefits and shall state the market-value adjustment formula the insurer uses to determine nonforfeiture benefits. The formula shall apply to both upward and downward adjustments.

4. With the form filing under s. 631.20, Stats., the insurer shall submit an actuarial statement of the basis for the market-value adjustment formula which states that the formula provides reasonable equity to both the policyholder and the insurer. The form filing shall demonstrate that, if the interest credits at all times during which the policy is in effect equal those

guaranteed in the policy, with premiums and benefits determined under the terms of the policy, then, ignoring any market-value adjustment, the resulting cash values and other nonforfeiture benefits shall be at least equal to the minimum values required by s. 632.43, Stats., for a fixed benefit general account policy with the same premiums and benefits.

5. 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.

6. At the end of any specified guarantee period, the policyholder may select a new guarantee period of not more than 5 years or until the end of the coverage period, whichever is shorter.

(b) Each modified guaranteed life insurance policy form filed for approval shall contain all of the following:

1. A cover page, or pages corresponding to a cover page, which shall include all of the following:

a. A prominent statement that cash values may increase or decrease in accordance with the market-value adjustment formula.

b. A captioned notice that the policyholder may return the policy within 10 days of its receipt, and receive a refund equal to the sum of (i) the difference between premiums paid, including policy fees and other charges, and the amounts allocated to any separate accounts under the policy, and (ii) the value of the amounts allocated to any separate accounts under the policy, on the date the insurer or its agent receives the returned policy, as determined by the market-value adjustment formula.

c. Any other item required by statute or administrative rule for fixed benefit life insurance policies which is not inconsistent with this section.

2. If settlement options are provided, a provision that at least one of the options shall be provided on a fixed basis only.

3. A description of the basis for computing the cash value and the surrender value under the policy.

4. A separate statement of premiums or charges for incidental insurance benefits.

5. Any other policy provision required by this section.

6. Any other item required by statute or administrative rule for fixed benefit life insurance policies which is not inconsistent with this section.

7. 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.

(c) Each modified guaranteed life insurance policy issued in this state shall provide that the policyholder may borrow at least 75% of the policy's cash surrender value after the policy has been in force for at least 3 years unless the policy includes a policy loan provision that is no less favorable to the policyholder. Each policy loan provision shall provide all of the following:

1. The amount borrowed shall bear interest as provided under s. 632.475, Stats.

2. The insurer shall deduct any indebtedness from the proceeds payable on death.

3. The insurer shall deduct any indebtedness from the cash surrender value upon surrender or in determining any nonforfeiture benefit.

4. 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 31 days after the date the notice is mailed. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amount available under the policy to pay those charges, the insurer shall mail the policyholder a report containing the information specified in par. (g) 2.

5. If the policy specifies a minimum amount which may be borrowed, the minimum may not apply to any automatic premium loan provision.

6. The policy loan provision does not apply if the policy is under an extended insurance nonforfeiture option.

7. A policyholder who has not exercised the policy loan provision may not be disadvantaged by exercising it.

8. Upon the exercise of any policy loan provision, the insurer shall withdraw from the separate account the amount paid to the policyholder and shall return that amount to the separate account upon repayment, except that a stock insurer may provide the amount for a policy loan from the general account.

(d) A modified guaranteed life insurance policy or related form issued in this state may, in substance, include one or more of the following provisions:

1. An exclusion for suicide within 2 years after the date the policy takes effect, except that, if the policy includes an increased death benefit as a result of the policyholder's application after the date the policy takes effect, the exclusion applies only to the amount of the increased benefit.

2. Incidental insurance benefits on a fixed or variable basis.

3. If the policy is issued on a participating basis, an offer to pay dividends in cash and other dividend options.

4. A provision allowing a policyholder to elect in writing, either in the application or after issuance of the policy, an automatic premium loan on a basis not less favorable than the requirements under par. (c), except that the insurer may restrict this provision to the payment of not more than 2 consecutive premiums.

5. A provision allowing the policyholder to make partial withdrawals.

6. Any other policy provision approved by the commissioner.

(e) 1. An insurer issuing any modified guaranteed life insurance policy in this state shall, before or at the time the application is taken, deliver to the applicant and obtain from the applicant a written acknowledgment of receipt of all of the following information:

a. A non-technical summary of the principal features of the policy, including a description of the manner in which the nonforfeiture benefits will be affected by the market-value adjustment formula and the factors which affect the variation. The summary shall include the notice required by par. (b) 1. b.

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

c. Illustrations, prepared by the insurer, of benefits payable under the policy. No illustration may include a projection of past investment experience into the future or a prediction of future investment experience. This subparagraph does not prohibit the use of hypothetical assumed rates of return to illustrate possible levels of benefits if the insurer makes it clear that such assumed rates are hypothetical only.

2. An insurer may satisfy the requirements of subd. 1 by delivering to the policyholder a disclosure containing the information required by

subd. 1, either in the form of a prospectus which is part of an effective registration statement under the securities act of 1933, 15 U.S.C. ss. 77a to 77aa or, if the policies are exempt from the registration requirements of the securities act of 1933, all information and reports required by the employee retirement income security act of 1974, 29 U.S.C. ss. 1001 to 1461.

(f) The application for a modified guaranteed life insurance policy shall contain all of the following:

1. Immediately before the signature line, a statement that amounts payable under the policy are subject to a market-value adjustment before a date or dates specified in the policy.

2. A request for information which will enable the insurer to determine the suitability of modified guaranteed life insurance for the applicant.

(g) 1. In this paragraph, "unadjusted cash value" means the cash value before applying any surrender charge or market-value adjustment formula.

2. An insurer shall mail to each holder of a modified guaranteed life insurance policy, at his or her last known address, an annual report showing the unadjusted cash value, the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge and any optional payments allowed under the policy. The report shall also specify the surrender charge and market-value adjustment formula used to determine the cash surrender value. Each report shall state that the cash values may increase or decrease in accordance with the market-value adjustment formula. The report shall prominently identify any stated value that may be recomputed before the next annual report.

3. For flexible premium policies, if the unadjusted cash value and cash surrender value are different, the annual report shall contain a reconciliation of these values based on payments made less deductions for

expense charges, withdrawals, investment experience, insurance charges and any other charges made against the cash value. The annual report shall also show the projected unadjusted cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming all of the following:

a. Planned periodic premiums, if any, are paid as scheduled.

b. Guaranteed costs of insurance are deducted.

c. Interest is credited at the guaranteed rate or, in the absence of a guaranteed rate, at a rate not greater than zero. If the projected unadjusted cash value is less than zero, the report shall include a warning stating that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid.

4. The insurer shall mail each annual report within 30 days after one of the following dates:

a. The policy anniversary date, in which case the amounts reported shall be computed as of the policy anniversary date.

b. Another date specified in the policy, in which case the amounts reported shall be computed as of a date no earlier than 60 days before the mailing date.

(h) For flexible premium policies, the insurer shall also send a report to the policyholder whenever the amount 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 policy processing day. The report shall state the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment.

(8) MODIFIED GUARANTEED ANNUITIES. (a) Each insurer issuing modified guaranteed annuities in this state shall provide each contract holder with an annual report showing both the account value and the cash surrender value. The report shall clearly state that the account value does not include the application of any surrender charge or market-value adjustment formula. The annual report shall also specify the surrender charge and market-value adjustment formula used to determine the cash surrender value.

(b) 1. Each modified guaranteed annuity contract issued in this state shall describe the essential features of the procedures the insurer uses in determining the amount of nonforfeiture benefits.

2. No insurer may issue in this state a modified guaranteed annuity contract calling for periodic stipulated payments unless it contains in substance all of the following provisions:

a. A grace period of 30 days or one month within which the policyholder may make any stipulated payment, other than the first payment, due the insurer. During the grace period the contract shall continue in force. The contract may include a statement of the basis on which the insurer determines the date that it will apply any stipulated payment received during the grace period to produce the values under the contract arising from the application of the payment.

b. A right to reinstatement of the contract 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, upon payment to the insurer of the overdue payments as required by the contract, and of all indebtedness, including interest, on the contract. The right to reinstatement does not apply if the insurer has paid the cash surrender value of the contract. The contract may include a statement of the basis on which the insurer determines the date that it will apply the amount to cover the overdue payments and indebtedness to produce the values under the contract arising from the application of the payment.

3. Each modified guaranteed annuity contract shall state the market-value adjustment formula the insurer uses to determine nonforfeiture benefits. The formula shall apply to both upward and downward adjustments. With each policy form filed under s. 631.20, Stats., the insurer shall submit an actuarial statement of the basis for the market-value adjustment formula which states that the formula provides reasonable equity to both the contract holder and the insurer.

4. Unless provided under any applicable contract, the portion of the assets of any separate account equal to the reserves and other applicable contract liabilities of the account are not chargeable with liabilities arising out of any other business of the insurer.

(c) 1. Subdivisions 2 to 10 do not apply to any of the following:

a. Reinsurance.

b. A group annuity contract purchased in connection with a retirement plan or deferred compensation plan established or maintained by or for one or more employers, including partnerships, sole proprietorships, employe organizations or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under 26 U.S.C. s. 408, as amended.

c. A premium deposit fund.

d. An investment annuity.

e. An immediate annuity.

f. A deferred annuity contract after annuity payments have commenced.

g. A reversionary annuity.

h. A contract which will be issued outside this state through an agent or other representative of the insurer.

2. No insurer may issue a modified guaranteed annuity contract in this state unless it contains in substance all of the following provisions:

a. A plan that complies with subd. 4 for granting a paid-up annuity benefit upon cessation of payment of considerations under the contract. The contract shall describe the plan and shall include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

b. If the contract provides for a lump sum settlement at maturity or at any other time, a provision for the payment of a cash surrender benefit that complies with subd. 5 instead of a paid-up annuity benefit, upon surrender of the contract at or before the commencement of annuity payments. The contract shall describe the cash surrender benefit and may provide that the insurer may defer payment of the cash surrender benefit for a period of 6 months after demand.

3. In establishing the minimum value of a paid-up annuity, cash surrender or death benefit available under a modified guaranteed annuity contract, the insurer shall base the value on nonforfeiture amounts meeting the requirements of this subdivision and subd. 4. The unadjusted minimum nonforfeiture amount on any date before the annuity commencement date shall equal the percentages of net considerations, as specified in subd. 4, increased by the interest credits allocated to the percentage of net considerations. The insurer shall reduce this amount to reflect the effect of all of the following:

a. Any partial withdrawals from or partial surrender of the contract.

b. The amount of any indebtedness on the contract, including interest due and accrued.

c. An annual contract charge which shall equal the lesser of $30 or 2% of the end-of-year contract value less the amount of any annual contract charge deducted from any gross considerations credited to the contract during the contract years. The contract charge may not be less than $0.00.

d. A transaction charge of $10 for each transfer to another investment division with the same contract.

4. For purposes of subd. 3:

a. 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.

b. The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract.

c. The annual contract charge of $30 and the transaction charge of $10 shall be adjusted to reflect changes in the consumer price index as provided in subd. 5. c.

5. The percentages of net considerations used to define the minimum nonforfeiture amount under subd. 3 shall meet all of the following requirements:

a. If the contract provides for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture amount shall not be less than $0.00 and shall equal the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year and less any charge for premium taxes. The percentages of net considerations shall be 65% for the first contract year and 87 1/2% for the

2nd and subsequent contract years except that the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds, by not more than 2 times, the sum of those portions of the net considerations in all prior contract years for which the percentage was 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 $75 and less any charge for premium taxes. The percentage of the net consideration shall be 90%.

c. The annual contract charge of $30 and the collection charge of $1.25 under subpar. a and the single consideration contract charge of $75 under subpar. b, shall be adjusted annually to reflect changes in the consumer price index by multiplying each charge by the ratio of the consumer price index for June of the year preceding the date of filing to the consumer price index for June, 1979. "Consumer price index" means the index for all urban consumers for all items as published by the bureau of labor statistics of the United States department of labor or any successor agency. If publication of the consumer price index ceases, or if the index otherwise becomes unavailable or is altered so as to be unusable for purposes of this paragraph, the commissioner may substitute another suitable index.

6. An insurer shall use any paid-up annuity benefit available under a modified guaranteed annuity contract that has a present value on the annuity commencement date that is at least equal to the minimum nonforfeiture amount on that date. The insurer shall compute the present value using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

7. For modified guaranteed annuity contracts which provide cash surrender benefits, the cash surrender benefit at any time before the annuity

commencement date shall be equal to or greater than the minimum nonforfeiture amount next computed after the insurer receives a request for surrender. The death benefit under the contract shall be at least equal to the cash surrender benefit.

8. Any modified guaranteed annuity contract which does not provide either a cash surrender benefit or a death benefit at least equal to the minimum nonforfeiture amount before the annuity commencement date shall include, in a prominent place in the contract, a statement that these benefits are not provided.

9. Notwithstanding any other requirement of this paragraph, a modified guaranteed annuity contract may provide that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount or the minimum nonforfeiture amount, and that the payment shall release the insurer from any further obligation under the contract. This option shall apply only under one of the following conditions:

a. At the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount or 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.

b. Before the annuity becomes payable under a periodic payment contract, the insurer has not received any considerations under the contract for a period of 2 years and the total considerations paid before the 2-year period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, plus the larger of the unadjusted minimum nonforfeiture amount or the minimum nonforfeiture amount is less than $2,000.

10. For any modified guaranteed annuity contract which provides in the same contract, by rider or supplemental contract provision, both annuity benefits and life insurance benefits that exceed the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall equal the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the insurance portion computed as if each portion were a separate contract. Notwithstanding subd. 2, in determining the minimum nonforfeiture amounts and paid-up annuity, cash surrender and death benefits required by this paragraph, the insurer shall disregard additional benefits payable in the event of the total and permanent disability of the contract holder, as reversionary annuity or deferred reversionary annuity benefits or as other policy benefits additional to life insurance, endowment and annuity benefits and considerations for all such additional benefits. The inclusion of such additional benefits is not required in any paid-up benefits unless the additional benefits would, if provided separately, require minimum nonforfeiture amounts and paid-up annuity, cash surrender and death benefits.

(d) The application for a modified guaranteed annuity shall contain, immediately before the signature line, a prominent statement that amounts payable under the contract are subject to a market-value adjustment before a date or dates specified in the contract.

(9) PROVISIONS APPLICABLE TO MODIFIED GUARANTEED LIFE INSURANCE AND ANNUITIES. (a) Before any insurer issues any modified guaranteed life insurance policy or modified guaranteed annuity contract in this state, the commissioner may require the insurer to file a copy of any prospectus or other sales material to be used in connection with the marketing of the modified guaranteed life insurance policy or 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.

(b) An insurer issuing a modified guaranteed life insurance policy or a modified guaranteed annuity in this state shall submit to the commissioner all of the following:

1. A separate account annual statement which shall include the business of these policies or contracts.

2. Any additional information required by the commissioner.

(c) The commissioner may disapprove any material required to be filed if the commissioner finds that the material does not comply with this section.

(d) The statutes and administrative rules governing individual life insurance and individual annuity form filings also apply to modified guaranteed life insurance policies and modified guaranteed annuity contracts. Each filing shall demonstrate in a form satisfactory to the commissioner that the nonforfeiture provisions of the policy or contract comply with this section.

(e) 1. An insurer shall establish reserve liabilities in accordance with actuarial procedures that recognize all of the following:

a. The market value basis of the assets of the separate account.

b. The variable nature of the benefits provided.

c. Any mortality guarantees.

2. The separate account liability shall equal the surrender value based on the market-value adjustment formula contained in the modified guaranteed life insurance policy or modified guaranteed annuity contract. If that liability is greater than the market-value of the assets, the insurer

shall transfer assets into the separate account so that the market value of the assets at least equals that of the liabilities. The insurer shall establish any additional reserve that is needed to cover future guaranteed benefits.

3. An insurer shall consider the market-value adjustment formula, the interest guarantees and the degree to which projected cash flow of assets and liabilities are matched. The statement of actuarial opinion accompanying each annual statement shall include an opinion on whether the assets in the separate account are adequate to provide all future guaranteed benefits.

4. An insurer shall maintain in the general account reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits.

SECTION 7. Ins 2.13 (13) is created to read:

Ins 2.13 (13) NONAPPLICABILITY. To the extent that any provision of sub. (7) or (8) is inconsistent with a provision of sub. (6) or (10), sub. (6) or (10) does not apply to a policy or contract described in sub. (7) or (8).

EFFECTIVE DATE. Pursuant to s. 227.22 (2) (intro.), Stats., this rule shall take effect on the first day of the month following publication.

Dated at Madison, Wisconsin, this 14th day of March, 1990

RECEIVED

MAR 14 1990

Revisor of Statutes
Bureau

Robert D. Haase
Commissioner of Insurance

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03/13/90