TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. LICENSURE OF PRODUCERS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, CEMETERY MERCHANDISE TRUSTS, AND VIATICAL SETTLEMENT PROVIDERS AND BROKERS

SUBCHAPTER 3. PRODUCERS, BROKERS, LIMITED LINES PRODUCERS AND VEHICLE PROTECTION PRODUCT WARRANTORS

365:25-3-14. Insurance adjusters continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance adjuster must meet, and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

(b) **Definitions.** The following words or terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"CE"** means continuing education.

(2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

(4) **"Credit hour"** means at least fifty (50) minutes of classroom instruction, unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance adjuster.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance adjusters.

(9) **"Provider Course Completion Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by an adjuster or adjusters.

(c) **Exceptions.** Continuing education requirements shall not apply to non-resident adjusters licensed in a designated home state that has a continuing education requirement for adjusters.

(d) **Continuing education requirements.**

(1) **CE during twenty-four month period.** All licensees shall complete the required hours of continuing education as set forth in Section 6217(B) of Title 36 of the laws of this state during each twenty-four month period. The twenty-four month period begins the first day after the license is granted.

(2) **Certificates of course completion required for license renewal.** If requested by the Insurance Department, each adjuster shall submit upon each licensing renewal a

certificate(s) of course completion as approved by the Insurance Department, which verifies courses completed during the previous twenty-four month period.

(3) **Credits carried over.** Six (6) credit hours in excess of the minimum twenty-four month period requirement shall carry forward to the next twenty-four month period as general hours. Excess hours may be applied to bring a lapsed license into compliance.

(4) **Legislative Updates.** At least two (2) of the continuing education credit hours of instruction completed by licensees each twenty-four month period shall be taken in the following topics:

(A) State legislative updates, or

(B) Federal legislative updates.

(5) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session by including his/her name and license number on roster.

(6) **Prerequisite for renewal or reinstatement.** As a prerequisite for license renewal or prior to reinstatement following a lapse of license, an adjuster must demonstrate that the educational requirements have been reported for the previous renewal cycle.

(e) **Approval of continuing education providers.**

(1) **Information required.** Each provider shall apply for approval by the Commissioner. Each provider, with the exception of public funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations, and Oklahoma state agencies shall submit a provider fee of Two Hundred Dollars ($200.00), and all providers, including public funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations and Oklahoma agencies shall provide:

(A) Name, address, and email address of the provider.

(B) Contact person and his or her address and telephone number(s).

(2) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(3) **Renewal fee.** An annual renewal fee of Two Hundred Dollars ($200.00) shall be payable on or before the approval anniversary date of each year by each provider to renew the approval of the provider. A fee of double the annual renewal fee shall be paid if the application for renewal is late or incomplete on the approval anniversary date.

(4) **Reinstatement period.** Providers whose approval has expired may be reinstated pursuant to paragraph 1 of this subsection. The reinstatement period shall be for a period of one (1) year following the expiration of the renewal date. The approval of the provider and any currently active courses shall remain active for the reinstatement period. If the provider and all courses fail to remain active following the reinstatement period, the provider and courses shall not be reinstated and the provider and courses shall be required to be approved pursuant to the provisions of this subsection.

(f) **Courses; approval; records.**

(1) **Timeline for approval.** At least thirty (30) days prior to the use of any course and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply for and submit

the appropriate course review fee to the Commissioner for course approval. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CE hours awarded for an approved course and the line or lines of insurance for which the course qualifies. The provider shall submit the following at the time of application:

(A) The number of CE hours requested for each course.

(B) Topic outlines which list the summarized topics covered in each course and a copy of any course materials.

(C) If a prior approved course has materially changed, a summarization of those changes.

(2) **Instructor approval.** Instructors shall be approved by the Commissioner at least fourteen (14) calendar days prior to a presentation of a course. The Commissioner may disapprove any course if instructor approval has not been granted. An instructor shall have one of the following qualifications:

(A) Three (3) years of recent experience in the subject area being taught; or

(B) A degree related to the subject area being taught; or

(C) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(3) **Repeated approved course.** At least fourteen (14) days prior to the repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date, location and instructor's name.

(4) **Written approval required.** All courses shall require written approval by the Commissioner.

(5) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course. This withdrawal will not affect any CE hours attained under the course previous to the withdrawal.

(6) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(7) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.

(8) **Content of courses.** Courses must be of a meaningful nature and shall not include insurance company specific courses in areas such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, basic pre-licensing principles of adjusting, and subjects not relating to the adjuster's license.

(9) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance adjuster a "Certificate of Course Completion" Form.

(10) **List of adjusters completing course to Commissioner.** Within ten (10) business days after completion of each course, the provider electronically upload a list of all insurance adjusters who completed the course to the Commissioner's database system. This list shall contain the course number, date of completion and license numbers of all insurance adjusters completing the course. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department.

Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(11) **Course records maintained four (4) years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(12) **Course review fee.** A non-refundable course review fee of thirty dollars ($30.00) per course shall be submitted by all continuing education providers at the time the course submission is first submitted for review and upon submission for renewal at expiration with the exception of publicly funded educational institutions, federal agencies, Oklahoma state agencies, non-profit organizations, and not-for-profit organizations.

(13) **Course evaluation.** The continuing education provider shall provide written notification to each producer of the opportunity to offer comments on any continuing education class via the Insurance Department website.

(g) **Approved professional designation programs**

(1) **Definitions.**

(A) **Participation.** As used in 36 O.S. § 6217(C), participates means successfully completing any part of a course curriculum totaling ~~twenty (20)~~twenty-four (24) classroom or equivalent classroom hours of an approved professional designation program.

(B) **Approved professional designation program.** As used in 36 O.S. § 6217(C), an approved professional designation program means an educational insurance program approved by the Commissioner with a sponsoring organization that administers curriculum requirements and testing standards for candidates.

(2) **Requirements.** A professional designation program shall satisfy the following criteria to receive initial and ongoing approval for the program:

(A) The program shall have a sponsoring organization;

(B) The program's sponsoring organization shall maintain and govern a code of conduct;

(C) The program shall be relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma;

(D) Each course of the professional designation course curriculum shall be a minimum of ~~twenty (20)~~twenty-four (24) hours of classroom instruction or equivalent classroom instruction; and

(E) The program shall include an examination requirement that students shall pass before earning the designation.

(3) **Submissions.** The sponsoring organization shall submit the following to the Commissioner for its professional designation program to be considered for initial and ongoing approval for the program:

(A) The sponsoring organization's code of conduct;

(B) The sponsoring organization's membership requirements;

(C) The professional designation program's course requirements; and

(D) The professional designation program's examination requirements.

(4) **Submission exemptions.** Professional designation programs recognized by the National Association of Insurance Commissioners (NAIC) for waiver/exemption of pre-licensing education training shall receive initial and continuing approval without submission by the sponsoring organization.

(h) **Presumptive continuing education credit approval.**

(1) **Requirements.** A professional association may receive presumptive approval of the association's continuing education courses by satisfying the following requirements:

(A) The association shall have a mission statement that includes a commitment to enhance the professional, educational, or ethical skills of its members;

(B) The association shall maintain and govern a code of member conduct;

(C) The association shall offer educational programs relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma; and

(D) The association shall perpetuate its continuity through the election of officers.

(2) **Submissions.** Each professional association shall submit the following to be considered for initial and ongoing presumptive course approval:

(A) The association's mission statement;

(B) The association's code of member conduct;

(C) The chapter officers, the responsibilities for each officer, and the term of office for each officer;

(D) The mailing address and primary contact for the association; and

(E) The list of continuing education courses approved in Oklahoma and offered by the professional association in the past twenty-four (24) months.

(3) **Notification of approval or disapproval.**

(A) The Commissioner shall notify the association within ninety (90) days from the receipt of submission whether presumptive approval for continuing education courses was granted. The notification shall indicate the reasons for disapproval.

(B) Submissions to the Commissioner by an association seeking presumptive approval of continuing education courses shall include the course summary, instructor name, course date and location and shall be submitted to the Commissioner at least fifteen (15) business days prior to the presentation of the course.

(C) If the Commissioner receives a report or reports that the content of a continuing education course may violate paragraph 365:25-3-1(f)(8) of this section, the Commissioner may review the content and determine if the course should be disapproved for noncompliance. The Commissioner shall notify the association if the course has been disapproved due to non-compliance, and the association shall immediately cease offering the course upon receipt of the notification. The association may then make corrections to a disapproved course to bring the course into compliance with paragraph 365:25-3-1(f)(8) of this section and submit the course for approval by the Commissioner in the manner of an original submission for presumptive continuing education course approval.

(D) Should an association receive notification of three (3) disapproved courses within a twenty-four (24) month period, the association's presumptive approval for continuing education courses shall be rescinded for twenty-four (24) months after which time the association may re-apply for presumptive approval.

(4) **Assignment of course number.** The Commissioner shall assign a course number once the presumptive approval for continuing education courses has been granted and

shall notify the association of the assigned course number. All future correspondence relating to that course shall reference the assigned course number.

(5) **Instructor approval.** Instructors shall be approved by the Commissioner at least fourteen (14) calendar days prior to a presentation of a course. The Commissioner may disapprove any course if instructor approval has not been granted.

(6) **Review.** Course approval shall be reviewed every three (3) years. The association shall re-submit the items required in subparagraph 365:25-3-14(H)(3)(B) of this section during the fourth quarter of the last approval year.

(7) **Agency management courses.** Agency management courses shall not be considered for presumptive continuing education approval.

(i) **Self study and distance learning courses.** The Insurance Commissioner shall determine appropriate guidelines and standards for self-study and distance learning CEC offerings. The guidelines and standards shall include authentication of the registered licensee, technology requirements for course delivery and testing protocols. Guidelines and standards shall be reviewed and updated as appropriate and published on the Commissioner's website annually. Failure to follow the guidelines and standards established by the Commissioner may result in denial of continuing education credit for the adjuster and revocation of the course approval and or provider status for the Provider.

(j) **Repeating courses.** An insurance adjuster may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the adjuster may not during the twenty-four month period earn more than the maximum credits designated for the course. An adjuster may repeat a course after two (2) years have elapsed and receive the maximum credits designated for the course.

(k) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twelve-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.

(l) **Continuing education advisory committee.**

(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of representatives from the Licensing Division, and representatives from the industry as designated by the Commissioner. Members of the Advisory Board established by 36 O.S. § 6221 may also serve on the Continuing Education Advisory Committee. The committee shall meet at least quarterly and additionally as required. Members of the committee shall serve without pay and shall not be reimbursed for any expenses associated therewith.

(2) Prior to the Commissioner's approval or disapproval of a course in 365:25-3-14(f), a continuing education advisory committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted in 365:25-3-14-(f) regarding the course or additional information regarding the course, if necessary, the number of CE hours awarded for an approved course and the line or lines of insurance for which the course qualifies. Each course approval shall be valid for a period of not more than two (2) years,

unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course approval following the review of material changes shall reset the validity period. At the expiration of the validity period, providers shall submit the course for approval by the Commissioner if the provider wants to continue to offer the course for continuing education credit.

(m) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SUBCHAPTER 5. BAIL BONDSMEN

PART 5. GENERAL PROVISIONS PERTAINING TO BAIL BONDSMEN

365:25-5-31. ~~Business and residence~~Residence, business, mailing, and e-mail addresses on applications

(a) Original and renewal applications shall include the following:

(1) applicant's residence ~~mailing~~ address,

(2) applicant's ~~residence street (physical)~~business address,

(3) ~~prospective place of business~~applicant's mailing address, and

(4) ~~prospective place of business street (physical) address~~applicant's e-mail address.

(b) An applicant's business address and mailing address shall be in the same county.

365:25-5-33. Change of mailing address, legal name, e-mail address, or telephone requirements

(a) 59 O.S. §1310 requires bail bondsmen to notify the Insurance Commissioner within five (5) days after a change of mailing address, legal name, e-mail address, or telephone number. This notification must include:

(1) ~~signature~~name and license number of the bondsman,

(2) date of the notification, ~~and~~

(3) the bondsman's current telephone number~~.~~, and

(4) the bondsman's current e-mail address.

(b) This notification may be in any form acceptable to the Insurance Commissioner.

SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION

365:25-15-1. Purpose and authority

This ~~regulation~~subchapter provides rules for administering the Oklahoma Captive Insurance Company Act, 36 O.S. §§ 6470.1, et seq., and applicable provisions of the Oklahoma Insurance Code. This ~~regulation~~subchapter sets forth the financial, ~~and~~ reporting, and other requirements which the Insurance Commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Oklahoma Insurance Code and the Oklahoma Captive Insurance Company Act. References to "company" in this ~~regulation~~subchapter shall mean captive insurance company or companies, unless otherwise specified.

365:25-15-2. Annual reporting requirements

(a) ~~An association~~A pure, association, sponsored, or industrial captive insurance company doing business in this State shall annually, prior to March 1, submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that ~~required by Section 311 of Title 36 of the Oklahoma Statutes.~~prescribed by the Insurance Commissioner as “Oklahoma Captive Insurance Company Annual Report.”

(b) ~~A pure or industrial insured captive insurance company~~A risk retention group doing business in this State shall annually submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that ~~prescribed by the Insurance Commissioner as "Captive Annual Statement: Pure or Industrial Insured." The reports shall be those~~ required by Section 311 of Title 36 of the Oklahoma Statutes.

365:25-15-3. Annual Audit

(a) All companies shall have an annual audit by an independent certified public accountant, authorized by the Insurance Commissioner, and shall file such annual audited financial report with the Insurance Commissioner on or before June 30 for the year ending December 31 immediately preceding.

(b) A pure captive insurance company may make written application to file its annual report on a fiscal year basis and shall file such report no later than sixty (60) days following the close of the fiscal year.

(c) A company that elects to file its annual report on a fiscal year basis shall submit, concurrently with each premium tax return required, a schedule detailing the net direct written premium and assumed premium for the fiscal year in question.

~~(b)~~(d) The annual audited financial report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the Insurance Commissioner.

~~(c)~~(e) The annual audited financial report shall consist of the following:

(1) **Opinion of Independent Certified Public Accountant**

(A) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with ~~statutory~~generally accepted accounting principles~~ as set out in the Oklahoma Insurance Code~~, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner and the National Association of Insurance Commissioners.

(B) The opinion of the independent certified public accountant shall cover all years presented.

(C) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(2) **Report of Evaluation of Internal Controls**

(A) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, such controls as the system of authorization and approval and the separation of duties.

(B) The review shall be conducted in accordance with ~~statutory~~generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and the report shall be filed with the Insurance Commissioner.

(3) **Accountant's Letter.** The accountant shall furnish the company, for inclusion on the filing of the annual audited financial report, a letter stating:

(A) That (s)he is independent with respect to the company and conforms to the standards of his/her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

(B) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(C) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Department.

(D) That the accountant consents to the requirements of 365:25-15-4(c) of this regulation and that the accountant consents and agrees to make available for review by the Insurance Commissioner, or his appointed agent, the work papers as defined in 365:25-15-4(c).

(E) That the accountant is properly licensed by an appropriate state licensing authority and that (s)he is a member in good standing in the American Institute of Certified Public Accountants.

(4) **Financial Statements.** Statements required shall be as follows:

(A) Balance sheet,

(B) Statement of gain or loss from operations,

(C) Statement of changes in financial position,

(D) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus), and

(E) Notes to financial statements. The notes to financial statements shall be those required by ~~statutory~~generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and shall include:

(i) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the Insurance Commissioner.

(ii) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

(iii) A narrative explanation of all material transactions and balances with the company.

(5) **Certification of Loss Reserves and Loss Expense Reserves**

(A) The annual audit shall include an opinion as to the adequacy of the company's life, health, or annuity reserves, or its loss reserves and loss expense reserves.

(B) The individual who certifies as to the adequacy of reserves shall be approved by the Insurance Commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his competence in loss reserve evaluation to the satisfaction of the Insurance Commissioner.

(C) Certification shall be in such form as the Insurance Commissioner deems appropriate.

(f) Any company having direct written premiums of Two Million Dollars ($2,000,000) or less in the preceding year may request exemption from the annual audit requirement.

365:25-15-4. Independent Certified Public Accountant

(a) **Designation of Independent Certified Public Accountant.** Companies~~, after becoming~~ subject to ~~this regulation,~~ an annual audit shall, within ninety days, report to the Insurance Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this ~~regulation~~subchapter. The certified public accountant that is retained to conduct the annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the Insurance Commissioner.

(b) **Notification of Adverse Financial Condition.** A company shall require the independent certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Insurance Commissioner as required in Sections 311 ~~and~~or 6470.11 of Title 36 of the Oklahoma Statutes. The company, or its designated captive insurance manager, shall furnish such notification to the Insurance Commissioner within five working days of receipt thereof.

(c) **Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**

(1) Each company shall require the independent certified public accountant to make available for review by the Insurance Commissioner, or his appointed agent or examiner, the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than ~~seven (7)~~five (5) years after the period reported upon.

(2) The aforementioned review by the Insurance Commissioner shall be considered investigations and/or examination and all working papers obtained during the course of such investigations and/or examination shall be confidential. The company shall require that the independent certified public accountant provide ~~photocopies~~copies of any of the working papers which the Insurance Commissioner considers relevant. Such working papers may be retained by the Insurance Commissioner.

(3) "Work Papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

365:25-15-5. Deposit Requirement

Whenever the Insurance Commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Department cash, ~~or~~ securities ~~which satisfy the requirements of Section 613 and Article 17 of Title 36 of the Oklahoma Statutes~~approved by the Insurance Commissioner, or a clean irrevocable letter of credit issued by a bank chartered by the State of Oklahoma or a member bank of the Federal Reserve System and approved by the Insurance Commissioner. The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Insurance Commissioner. If such company discontinues business, the Insurance Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

365:25-15-6. Organizational examination

In addition to the processing of the application, an organizational investigation or examination may be performed before or after an applicant is licensed. Such investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; biographical affidavits ~~with background checks made by an independent third party~~; and a review of such other factors as the Insurance Commissioner deems necessary.

365:25-15-9. Executive officers and directors

(a) Every company shall report to the Insurance Commissioner within thirty days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. Every executive officer or director shall provide a biographical affidavit ~~and a background checked conducted by an independent third party~~ to the Insurance Commissioner within forty-five (45) days of his/her appointment as an executive officer or to the board of directors of the company.

(b) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company, but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

365:25-15-12. Acquisition of control of or merger with domestic company

(a) Companies shall comply with Section 1653 of Title 36 when seeking to acquire control of or merge with a domestic company, notwithstanding the Insurance Commissioner may waive or modify the requirements for public notice and hearing when the Insurance Commissioner concludes the public hearing is not necessary due to the limited public interest in the change of control.

(b) Definitions of terms found in Section 1651 of Title 36 shall apply when a captive insurance company seeks to acquire control of or merge with a domestic company. For purposes of this section, the definition of the term insurer as set out in Section 1651 of Title 36 shall include captive insurance companies.

365:25-15-13. Change of business

Any change in the nature of the captive business from that stated in the company's plan of operation filed with the Insurance Commissioner upon application requires prior approval from the Insurance Commissioner. Any change in any other information filed with the application must be filed with the Insurance Commissioner within sixty (60) days of the change, but does not require prior approval.

365:25-15-14. Prior approval

~~(a) Requests for the prior approval of the Insurance Commissioner of mergers, consolidations, conversions, mutualizations, redomestications or any other matter for which prior approval is required shall be made on the appropriate forms as set out in this Chapter for use by insurers or on forms as determined by the Insurance Commissioner.~~

~~(b) Requests for prior approval of the Insurance Commissioner other than as set out in Subsection (a) of this Section shall be made on Form D as set forth in Appendix O of this Chapter.~~

<u>Requests for the prior approval of the Insurance Commissioner of mergers, consolidations, conversions, mutualizations, redomestications or any other matter for which prior approval is required shall be made on the appropriate forms as set out in this Chapter for use by insurers or on forms as determined by the Insurance Commissioner.</u>

<u>365:25-15-15. Severability Provision</u>

<u>If any provisions of this subchapter or its applicability to any person or circumstance are held invalid, the remainder of the subchapter, and the application of such provisions to other persons or circumstances shall not be affected. To this end, the provisions of this subchapter are declared severable.</u>

SUBCHAPTER 19. ANNUITY DISCLOSURE REGULATION

365:25-19-5. Standards for the disclosure document and buyer's guide

(a) **Disclosure document and buyer's guide.**

(1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection (b) and the ~~Buyer's Guide contained in Appendix S of this Chapter~~<u>most current version of the NAIC Buyer's Guide to Annuities ("Buyer's Guide")</u>.

(2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

(A) With respect to an application received as a result of a direct solicitation through the mail:

(i) Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.

(ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(B) With respect to an application received via the Internet:

(i) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business day of receipt of the application.

(ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(C) A solicitation for an annuity contract provided in other than a face-to face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

(3) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.

(b) **Minimum information included in disclosure document.** At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;

(2) The insurer's name and address;

(3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:

(A) The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(B) An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(C) Periodic income options both on a guaranteed and non-guaranteed basis;

(D) Any value reductions caused by withdrawals from or surrender of the contract;

(E) How values in the contract can be accessed;

(F) The death benefit, if available and how it will be calculated;

(G) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(H) Impact of any rider, such as a long-term care rider.

(4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(c) **Understanding by a typical person.** Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

APPENDIX S. BUYER'S GUIDE TO FIXED DEFERRED ANNUITIES [REVOKED]

[The face page of the Fixed Deferred Annuity Buyer's Guide shall read as follows:]

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

Reprinted by. . .

It is important that you understand the differences among various annuities so you can choose the kind that best fits your needs. This guide focuses on *fixed deferred* annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your agent or the company. Make sure you're satisfied with the answers before you buy.

WHAT IS AN ANNUITY?

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.

An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.

Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefits of annuity contracts.

A *deferred* annuity has two parts or *periods.* During the *accumulation period*, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity**.** During the second period, called the *payout period*, the company pays income to you or to someone you choose.

WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're considering and the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

This Buyer's Guide will focus on individual fixed deferred annuities.

Single Premium or Multiple Premium

You pay the insurance company only one payment for a *single premium* annuity. You make a series of payments for a *multiple premium* annuity. There are two kinds of multiple premium annuities. One kind is a *flexible premium* contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a *scheduled premium* annuity, the contract spells out your payments and how often you'll make them.

Immediate or Deferred

With an *immediate* annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a *deferred* annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

Fixed or Variable

• Fixed

During the accumulation period of a *fixed deferred* annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the payout period, the amount of each income payment to you is generally set when the payments start and will not change.

• Variable

During the accumulation period of a *variable* annuity, the insurance company puts your premiums (less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account).

HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time**. Usually, what these rates will be is entirely up to the insurance company.**

Current Interest Rate

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not change for some time period.

• The *initial rate* is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.

• The *renewal rate* is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.

Minimum Guaranteed Rate

The *minimum guaranteed interest rate* is the lowest rate your annuity will earn. This rate is stated in the contract.

Multiple Interest Rates

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods.

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. **You get only one of the accumulated values depending on which benefit you choose.**

WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

Surrender or Withdrawal Charges

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a *withdrawal* charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a *surrender* charge. In either case, the company may figure the charge as a percentage of the value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a *window*, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a *bail-out* option.

In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a *rolling* surrender or withdrawal charge.

Some annuity contracts have a *market value adjustment* feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with a MVA feature may credit a higher rate than an annuity without that feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.

Free Withdrawal

Your annuity may have a limited *free withdrawal* feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.

Contract Fee

A contract fee is a flat dollar amount charged either once or annually.

Transaction Fee

A transaction fee is a charge per premium payment or other transaction.

Percentage of Premium Charge

A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.

Premium Tax

Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?

Annuity Income Payments

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's *benefit rate* in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.

There is a table of guaranteed benefit rates in each annuity contract. Most companies have *current* benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company generally uses the benefit rate in effect at that time to figure the amount of your income payment.

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you.

• Life Only - The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependents have enough income of their own.

• Life Annuity with Period Certain - The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This *period certain* is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity.
Because the "period certain" is an added benefit, each income payment will be smaller than in a lifeonly option.

• Joint and Survivor - The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be able to choose to have payments continue for a set length of time. Because the *survivor* feature is an added benefit, each income payment is smaller than in a life-only option.

Death Benefit

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?

While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.

WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.

Part of the payments you receive from an annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you withdraw the accumulation before age 59 1/2. The Internal Revenue Code also has rules about distributions after the death of a contract holder.

Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.

You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.

WHAT IS A "FREE LOOK" PROVISION?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a *free look* or *right to return* period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.

HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- How much retirement income will I need in addition to what I will get from Social Security and my pension?
- Will I need that additional income only for myself or for myself and someone else?
- How long can I leave my money in the annuity?
- When will I need income payments?
- Does the annuity let me get money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?

WHAT QUESTIONS SHOULD I ASK MY AGENT OR THE COMPANY?

- Is this a single premium or multiple premium contract?
- Is this an equity-indexed annuity?
- What is the initial interest rate and how long is it guaranteed?
- Does the initial rate include a bonus rate and how much is the bonus?
- What is the guaranteed minimum interest rate?
- What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?

- Are there withdrawal or surrender charges or penalties if I want to end my contract early and take out all of my money? How much are they?

- Can I get a partial withdrawal without paying surrender or other charges or losing interest?

- Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?

- Is there a market value adjustment (MVA) provision in my annuity?

- What other charges, if any, may be deducted from my premium or contract value?

- If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change?

- Is there a death benefit? How is it set? Can it change?

- What income payment options can I choose? Once I choose a payment option, can I change it?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule of charges that could mean new expenses you must pay directly or indirectly.

You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in.

Be sure you understand the effect of all charges.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.

Remember that the quality of service that you can expect from the company and the agent is a very important factor in your decision.

When you receive your annuity contract, **READ IT CAREFULLY!!** Ask the agent and company for an explanation of anything you don't understand. Do this *before* any free look period ends
.
Compare information for similar contracts from several companies. Comparing products may help you make a better decision.

If you have a specific question or can't get answers you need from the agent or company, contact your state insurance department.

EQUITY-INDEXED ANNUITIES

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

WHAT ARE EQUITY-INDEXED ANNUITIES?

An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500), which is an equity index. The value of any index varies from day to day and is not predictable. (**Note:** S&P 500 is a registered trademark of the McGraw-Hill Companies, Inc., used with permission.)

When you buy an equity-indexed annuity you own an insurance contract. You are not buying shares of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest, if any, is calculated and credited. How much additional interest you get and when you get it depends on the features of your particular annuity.

Your equity-indexed annuity, like other fixed annuities, also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death benefits. The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases.

WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula.

Indexing Method

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

Term

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

Participation Rate

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% (9% x 70% = 6.3%). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

Cap Rate or Cap

Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.

Floor on Equity Index-Linked Interest

The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases**,** your fixed annuity will have a minimum guaranteed value.

Averaging

In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.

Interest Compounding

Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.

Margin/Spread/Administrative Fee

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This percentage, sometimes referred to as the “margin,” “spread,” or “administrative fee,” might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% (10% - 2.25% =7.75%). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.

Vesting

Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

HOW DO THE COMMON INDEXING METHODS DIFFER?

Annual Reset

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.

High-Water Mark

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

Low-Water Mark

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

Point-to-Point

The index-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.

WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

Generally, equity-indexed annuities offer *preset* combinations of features. You may have to make tradeoffs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

Features	Trade-Offs
Annual Reset Since the interest earned is "locked in" annually and the index value is "reset" at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.	Your annuity's participation rate may change each year and generally will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year.
High-Water Mark Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle of the term, then drops off at the end of the term.	Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.
Low-Water Mark Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end of the term.	Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.
Point-to-Point Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other	Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end

designs.	of the term.

WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?

Cap on Interest Earned

While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.

Averaging

Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of index-linked interest you earn when the index rises either near the start or at the end of the term.

Participation Rate

The participation rate may vary greatly from one annuity to another and from time to time within a particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.

Interest Compounding

It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a higher participation rate.

WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?

In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

ARE DIVIDENDS INCLUDED IN THE INDEX?

Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.

HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?

Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?

Or, am I somewhere in between these two extremes and willing to take some risks?

HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.

QUESTIONS YOU SHOULD ASK YOUR AGENT OR THE COMPANY

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities.

- How long is the term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?
- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?
- Can I get a partial withdrawal without paying charges or losing interest? Does my contract have vesting? If so, what is the rate of vesting?

Final Points to Consider

Remember to read your annuity contract carefully when you receive it. Ask your agent or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the agent or company, contact your state insurance department.