

**CHAPTER 85. VARIABLE ANNUITY AND VARIABLE
ACCUMULATION ANNUITY CONTRACTS****GENERAL PROVISIONS**

- Sec.
85.1. Definitions.
85.2. Purpose.
85.3. Foreign and alien life insurance companies.
85.4. Departmental review.

QUALIFICATION TO ISSUE VARIABLE ANNUITY CONTRACTS

- 85.11. Licensing.
85.12. Years in business and capital surplus.
85.13. Wholly-owned subsidiaries.
85.14. Material to be filed.

SEPARATE ACCOUNTS

- 85.21. Examination.
85.22. Reserve liability.
85.23. Income, gains or losses.
85.24. Balancing of account.
85.25. Sale, exchange or transfer between accounts.
85.26. Annual statements.
85.27. Statements to policyholders.

**FILING OF CONTRACTS, APPLICATION AND CONTRACT
REQUIREMENTS**

- 85.31. Filing requirements.
85.32. Statement indicating variability of payments.
85.33. Statement of valuation procedure and fluctuation of value.
85.34. Illustrations of payable benefits.
85.35. Standard policy provisions.
85.36. Stipulation of expense, mortality and investment factors.
85.37. Computing dollar amounts of benefits.
85.38. Disclosure of consideration to be paid.
85.39. Disclosure of consideration for fixed benefits, variable benefits and variable accumulations.
85.40. Permissible guaranteed benefits.

Authority

The provisions of this Chapter 85 issued under section 406.2 of The Insurance Company Law of 1921 (40 P. S. § 506.2), unless otherwise noted.

Source

The provisions of this Chapter 85 adopted September 13, 1968, amended March 17, 1978, effective April 7, 1978, 8 Pa.B. 754, unless otherwise noted.

Cross References

This chapter cited in 31 Pa. Code § 87.5 (relating to profit-sharing policy prohibited); 31 Pa. Code § 89.62 (relating to group annuity policies and forms); and 31 Pa. Code § 90a.31 (relating to variable accumulations or variable benefits).

GENERAL PROVISIONS**§ 85.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Insurance Company Law of 1921 (40 P. S. §§ 341—991).

Agent—A person, copartnership or corporation licensed under the laws of the Commonwealth as a life insurance agent.

Department—The Insurance Department of the Commonwealth.

Separate account—An account established under section 406.2(a) of the act (40 P. S. § 506.2(a)).

Variable accumulation annuity contract—An annuity policy or contract, other than a variable annuity, under which amounts accumulated for the purchase of a fixed annuity or a fixed annuity and a variable annuity, where the accumulation values vary according to the investment experience of a separate account. The fixed annuity shall be purchased at rates at least as favorable to the policyholder as those stated in the variable accumulation annuity contract.

Variable annuity contract—Any policy or contract which provides for deferred or immediate annuity payments, the amount of which, after such payments have commenced, varies according to the investment experience of a separate account maintained by the insurer for the purpose of funding this contract.

§ 85.2. Purpose.

The purpose of this chapter is to provide for the implementation of section 406.2 of the act (40 P. S. § 506.2) prescribing the qualifications for companies or fraternal benefit societies to issue variable annuity contracts and variable accumulation annuity contracts in this Commonwealth, the requirements for the form and filing of such contracts and related materials, and the qualifications for agents to offer such contracts for sale in this Commonwealth.

§ 85.3. Foreign and alien life insurance companies.

(a) If the statutes or regulations of the place of domicile of a foreign or alien insurance company prevent compliance with any specific provision of this chapter, such insurance company shall so advise the Department in writing.

(b) If the laws or regulations of the place of domicile provide a degree of protection to the policyholders and the public which, in the opinion of the Department, is substantially equal to that provided by the provisions of this chapter, the Department, to the extent deemed appropriate by it, may consider compliance with such laws or regulations to be compliance with this chapter.

§ 85.4. Departmental review.

The Commissioner is authorized to cause frequent reviews to be conducted to measure compliance with the receiving and investment requirements set forth in § 85.40(b)(1) and (4) (relating to permissible guaranteed benefits) by any insurer issuing variable annuity or variable accumulation annuity contracts with guaranteed benefits.

(1) To the extent that reserves are improperly computed or maintained and that applicable separate account assets are improperly invested, a liability will be established by the Commissioner in an offsetting amount for purposes of evaluating financial condition.

(2) Subject insurers shall not claim value as an admitted asset in any financial statement to any asset which is invested contrary to § 85.40(b)(4).

QUALIFICATION TO ISSUE VARIABLE ANNUITY CONTRACTS**§ 85.11. Licensing.**

No company shall deliver or issue for delivery variable annuity contracts or variable accumulation annuity contracts within this Commonwealth, unless the following requirements are met:

(1) The company is licensed and authorized to transact the business of life insurance in this Commonwealth.

(2) The Department is satisfied that the condition or method of operation of the company in connection with the issuance of such contracts will not render its operation hazardous to the public or to its policyholders. In this connection, the Department may consider:

(i) The history and financial condition of the company, including the number of years the company has been transacting the business of life insurance in this Commonwealth.

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

Cross References

This section cited in 31 Pa. Code § 85.13 (relating to wholly-owned subsidiaries).

§ 85.12. Years in business and capital surplus.

The Department may prohibit the delivery or issuance of variable annuity contracts or variable accumulation annuity contracts within this Commonwealth by any company which has not been transacting the business of life insurance in this Commonwealth for a period of at least 5 years, or has capital and surplus, if a stock company, or an amount of surplus, if a mutual company, of less than \$1.5 million.

§ 85.13. Wholly-owned subsidiaries.

A company which is a wholly-owned subsidiary of a life insurance company which has been transacting the business of life insurance in this Commonwealth for a period of at least 5 years may at the discretion of the Department be deemed to have satisfied the requirements of § 85.11(2) (relating to licensing) if either the subsidiary or the life insurance company satisfies the requirements. Any wholly-owned subsidiary qualifying to issue variable annuity contracts or variable accumulation annuity contracts by virtue of this section may continue to issue such contracts only for so long as it continues to remain a wholly-owned subsidiary of the parent company through which it was deemed to have satisfied the applicable requirements of this section, unless such subsidiary has itself satisfied the requirements.

§ 85.14. Material to be filed.

Before any company delivers or issues for delivery variable annuity contracts or variable accumulation annuity contracts, or both, within this Commonwealth it shall, in addition to complying with the applicable laws of this Commonwealth and the provisions of this chapter, file with the Department all of the following material:

- (1) A certified copy of a resolution adopted by its board of directors establishing one or more separate accounts. Any amendments to this resolution or any resolution superseding it shall immediately be filed with the Department.
- (2) A copy of the latest Report of Examination of the company and Annual Statement if the company has not been previously admitted.
- (3) A general description of the type of variable annuity contracts and variable accumulation annuity contracts to be issued and, a statement of reserving procedures, investment objectives of each separate account that will be used, and two copies of any final prospectus registered with the Securities and Exchange Commission. If no such prospectus is available a statement of all applicable sales and administrative expenses shall be filed with the Department.
- (4) A copy of any management or service contract entered into between the company and a third party or between any separate account and a third party, the terms of which contain provisions for the third party to provide managerial,

investment, or sales services to any separate account. Any such contract entered into following the initial filing shall also be filed with the Department.

(5) Biographical statements concerning officers and directors of the insurance company or separate account and, if requested by the Department, of the officers and directors of the management company.

(6) Any other information as may be required by the Department.

(7) If assets are to be maintained in the separate account in excess of the reserve liability for the variable benefits funded through the separate account, a clear explanation of the purposes for which such additional assets are maintained and a statement of the basis which the company will use to determine the amounts of additional assets to be maintained for these purposes.

SEPARATE ACCOUNTS

§ 85.21. Examination.

The investments and operation of any separate account established in connection with any variable annuity contract or a variable accumulation annuity contract shall be examined periodically by the Department in accordance with the applicable laws of the Commonwealth.

§ 85.22. Reserve liability.

The reserve liability for variable annuity contracts shall be established pursuant to the requirements of the standard valuation law, section 301 of the act (40 P. S. § 71), in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

§ 85.23. Income, gains, or losses.

Any income, gains, or losses realized or unrealized on each separate account shall be credited to or charged against the amount allocated to such separate account without regard to the other income, gains, or losses of the company. However, a variable annuity contract on a group basis or a variable accumulation annuity contract on a group basis may provide for the interdependence of two or more separate accounts established in conjunction with such contract.

§ 85.24. Balancing of account.

Any deficit which may arise in any separate account by virtue of mortality experience guaranteed by the life insurance company or by expense costs so guaranteed shall be adjusted by transfers from unallocated surplus or contingency reserves not required by law to such separate account so that the assets of such account shall at least be equal to the liabilities.

§ 85.25. Sale, exchange or transfer between accounts.

(a) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts, except a transfer for the following purposes:

- (1) Establishing a separate account.
- (2) Conducting the business of a separate account in accordance with the provisions of a variable annuity contract or a variable accumulation annuity contract.
- (3) Making necessary adjustments for mortality experience or expense costs.
- (4) Transferring to the general account any amounts in excess of the reserve liability held in the separate account.

(b) Any transfer made in accordance with subsection (a), whether into or from a separate account, shall be made by a transfer of cash, or with the approval of the Department, by a transfer of securities having a valuation which may be readily determined in the marketplace. The Department may also authorize other transfers among such accounts if, in its opinion, such transfers would be in the best interests of the contract holders, the company and the public.

§ 85.26. Annual statements.

Each life insurance company shall, at the time of its annual statement, submit a separate annual statement for the business of its separate accounts. This statement shall be in the form prescribed by the Department, and shall include details as to all of the income, disbursements, assets and liability items associated with any separate account. The Department may, in addition, require of a company from time to time such other statements concerning the business of its separate accounts as the Department may deem necessary.

§ 85.27. Statements to policyholders.

(a) Any company issuing individual variable annuity contracts or individual variable accumulation annuity contracts shall mail to the contract holder, at least once in each contract year after the first year at his last known address, 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 as of a date not more than three months previous to the date of mailing one of the following:

- (1) The number of accumulation units credited to such contracts and the dollar value of a unit.
- (2) The value of the account of the contract holder.

(b) The reporting date, once fixed, shall remain constant each year, unless the Department approves the use of a different reporting date or dates. The additional

statement or statements shall also be made available to any contract holder at his request, and shall be furnished within a reasonable time from this request.

(c) The company may make a reasonable charge to the contract holder for any additional statement or statements, and may make reasonable limitations upon the number or frequency of these requests by the same contract holder.

FILING OF CONTRACTS, APPLICATION AND CONTRACT REQUIREMENTS

§ 85.31. Filing requirements.

The filing requirements applicable to variable annuity contracts and variable accumulation annuity contracts shall be those filing requirements otherwise applicable under existing statutes and regulations of the Commonwealth with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate.

§ 85.32. Statement indicating variability of payments.

(a) Each application form for an individual variable annuity contract shall contain a clear statement, prominently set forth immediately preceding the signature line, denoting that the contractual payments or values under the variable annuity provisions of the contract being applied for are variable and are not guaranteed as to fixed dollar amounts.

(b) Each application for an individual variable accumulation annuity contract shall contain a clear statement, prominently set forth immediately preceding the signature line, denoting that the accumulation values under the variable accumulation provisions of the contract being applied for are variable and are not guaranteed as to fixed dollar amounts.

§ 85.33. Statement of valuation procedure and fluctuation of value.

(a) Any variable annuity contract delivered or issued for delivery in this Commonwealth shall contain clear statements denoting the following:

(1) The essential features of the procedure to be used by the company in determining the dollar amount of such variable benefits or other variable contractual payments or variable values to be paid the contract holder.

(2) The fact that such benefits or other contractual payments or values may decrease or increase with investment experience, and are not guaranteed as to fixed dollar amounts.

(b) Any variable accumulation annuity contract delivered or issued for delivery in this Commonwealth shall contain clear statements denoting the following:

(1) The essential features of the procedure to be used by the company in determining the dollar amount of the accumulation values to be paid the contract holder.

(2) The fact that the accumulation values may decrease or increase with investment experience and are not guaranteed as to fixed dollar amounts.

(c) The statements required under subsections (a)(2) and (b) shall appear in a prominent position in contrasting color or prominent type on the first page of the contract and on the first page or front cover of any certificate evidencing coverage issued pursuant to any variable annuity contract or variable accumulation annuity contract on a group basis.

§ 85.34. Illustrations of payable benefits.

Illustrations of benefits payable under any contract providing benefits payable in variable amounts or accumulation values of variable amounts shall not include projections of past investment experience into the future, nor shall they attempt predictions of future investment experience of the Separate Account, provided that this is not intended to prohibit the use of hypothetical assumed rates of return, clearly designated as such, to illustrate possible levels of annuity payments.

§ 85.35. Standard policy provisions.

No individual variable annuity contract or individual variable accumulation annuity contract calling for the payment of periodic stipulated payments or premiums shall be delivered or issued for delivery in this Commonwealth unless it contains provisions which, in the opinion of the Department, are at least as favorable as the following:

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

(2) At any time within one year from the date of default in making periodic stipulated payments or premiums to the insurer during the life of the annuitant, and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by the contract, and of all indebtedness to the insurer on the contract, including interest. The contract shall also include a statement of the basis for determining the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom.

(3) The specific options available in the event of default in a payment, which 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 amount of such paid-up

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

§ 85.36. Stipulation of expense, mortality and investment factors.

(a) Any individual variable annuity contract or group annuity contract where accumulation values are held separately for each covered participant delivered or issued for delivery in this Commonwealth 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 shall guarantee that the expense and mortality results shall not adversely affect such dollar amounts.

(b) Any individual variable accumulation annuity contract or group variable accumulation contract where accumulation values are held separately for each covered participant delivered or issued for delivery in this Commonwealth shall stipulate the expenses to be used in computing the dollar amount of the accumulation values, and it shall guarantee that the expense results shall not adversely affect such dollar amounts.

(c) When used in this section, the term “expense” may exclude some or all taxes, as stipulated in the contract.

§ 85.37. Computing dollar amounts of benefits.

In computing the dollar amounts of variable benefits or other contractual payments or values under an individual variable annuity contract the following requirements shall apply:

(1) The annual net investment increment assumption shall not exceed 6%, except with the approval of the Department.

(2) To the extent that the level of benefits may be affected by mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the Department, from another table.

§ 85.38. Disclosure of consideration to be paid.

(a) In the sale of a variable annuity contract, made in conjunction with the sale of a fixed annuity contract or a variable accumulation annuity contract, there shall be a disclosure to the prospective purchaser which shows the consideration to be paid for the variable annuity contract separately from the other charges. If any benefits or nonforfeiture values which may accrue prior to the death of the insured are involved in the presentation of such a sale, the value of such fixed annuity contract or variable accumulation annuity shall be shown separately from any other values.

(b) In the sale of a variable accumulation contract made in conjunction with the sale of a variable annuity contract or fixed annuity contract, there shall be a disclosure to the prospective purchaser which shows the consideration to be paid

for the variable accumulation contract separately from the other charges. If any benefits or nonforfeiture values which may accrue prior to the death of the insured are involved in the presentation of such a sale, the value of such variable annuity contract or fixed annuity contract shall be shown separately from any other values.

§ 85.39. Disclosure of consideration for fixed benefits, variable benefits, and variable accumulations.

Annuity contracts which provide for any combination of fixed benefits, variable benefits, and variable accumulations, which are specified at the time of the sale of such contracts, shall show separately the consideration to be paid for the fixed benefits, variable benefits and variable accumulation values or the proportion of such consideration to be paid for each benefit.

§ 85.40. Permissible guaranteed benefits.

(a) The following types of benefits guaranteed as to dollar amount shall be permitted in variable annuity contracts or variable accumulation annuity contracts; any other benefits guaranteed as to dollar amount which are not described in this subsection may be permitted if the Department determines that these benefits afford the policyholders and the public protection substantially equal to that provided by the benefits described in this subsection:

(1) Minimum Death Benefit, which guarantees that, upon the death of the annuitant, the beneficiary will be paid a specified percentage of gross premium paid to date, less any payments already made. The maximum percentage of gross premium that is payable is 100%.

(2) Minimum Surrender Value, which guarantees that, prior to the commencement of annuity payments but on or after a specified policy anniversary or of a group certificate which shall not be earlier than the tenth anniversary if the issue age is less than 55 nor earlier than the fifth anniversary if the issue age is greater than or equal to 55, the cash value of the contract will not be less than some specified percentage, not to exceed 100%, of the gross premium paid to date for the contract.

(b) A separate account contract containing any of the benefits described in subsection (a) shall cause the issuer to be subject to the following additional requirements:

(1) Reserves for any minimum guarantees of variable benefits shall be maintained in the general account of the insurer and shall be determined according to a reserve formula approved in advance by the Commissioner.

(2) Any premium charges of more than 1% or charges against the separate account assets of more than an effective annual rate of .5%, to provide minimum guarantee or variable benefits, shall be separately disclosed in the contract and shall be equitably determined so as not to unfairly discriminate by age, sex, size of policy, or generation of policyholders.

(3) No insurer may issue variable annuity or variable accumulation annuity contracts providing minimum surrender value guarantees if the sum of the excess of the minimum surrender value guarantees over 1/2 of the current cash of the current cash value would exceed 20% of the insurer's surplus. This amount may be considered as net of reinsurance ceded provided that such reinsurance contracts have prior approval of the Commissioner.

(4) Investments in separate accounts used to fund contracts containing either of the minimum guarantees set forth in paragraphs (2) or (3) shall be limited to the following:

(i) Common stock, preferred stocks, and bonds listed and traded on a national stock exchange or listed by the National Association of Securities Dealers Automated Quotations (NASDAQ).

(ii) Bonds, notes, or obligations of such governmental instrumentalities as are permitted by Pennsylvania law for the investment of assets held to satisfy capital requirements of life insurance companies.

(iii) Shares of an investment company registered pursuant to the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-52).

(iv) Prime commercial paper and certificates of deposit to the extent insured.

(v) Corporate obligations which meet the requirements of section 404(d) of the act (40 P. S. § 504(d)).

(vi) Real estate located within the United States which the insurer is authorized to hold under section 406(c), (d) or (f) of the act (40 P. S. § 506(c), (d) or (f)), provided that no real estate authorized under section 406(f) is acquired if the market value of all real estate held by the separate account immediately subsequent to the acquisition would exceed 15% of the reserve liability held in the separate account.

(vii) Cash.

(viii) Policy loans.

Authority

The provisions of this § 85.40 issued under section 406.2(d) of The Insurance Company Law of 1921 (40 P. S. § 506.2(d)); The Insurance Company Law of 1921 (40 P. S. §§ 101—1101); The Insurance Department Act of 1921 (40 P. S. §§ 1—321); and sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412).

Source

The provisions of this § 85.40 amended December 24, 1981, effective December 26, 1981, 11 Pa.B. 4439. Immediately preceding text appears at serial pages (36585) to (36586).

Cross References

This section cited in 31 Pa. Code § 85.4 (relating to Departmental review).

[Next page is 86-1.]

85-12

(240500) No. 281 Apr. 98

Copyright © 1998 Commonwealth of Pennsylvania