

**NEW YORK STATE
INSURANCE DEPARTMENT**

**SECOND AMENDMENT TO REGULATION NO. 74
(11 NYCRR 53)**

LIFE AND ANNUITY COST DISCLOSURE AND SALES ILLUSTRATIONS

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 308, 1313, 2123, 2208, 2405, 3201, 3203, 3209, 3219, 3222, 4221, 4223, 4226, 4231, 4232, 4240, 4510, 4511, 4513 and 4518 of the Insurance Law, Section 263 of the Banking Law of the State of New York, Chapter 505 of the Laws of 2000, and Chapter 13 of the Laws of 2002, do hereby promulgate the following Second Amendment to Part 53 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 74), to take effect upon publication in the State Register, to read as follows:

(UNDERLINED MATTER IS NEW; MATTER IN BRACKETS IS DELETED)

Section 53-1.3 of Subpart 53-1 is amended by adding a new subdivision (cc) to read as follows:

(cc) "Producer" means an insurance agent or an insurance broker.

Paragraph (1) of Section 53-2.1(a) of Subpart 53-2 is amended to read as follows:

(1) the name and address of the insurance agent or broker, or if no agent or broker is involved, a statement of the procedure to be followed to receive responses to inquiries concerning the preliminary information;

Subdivision (c) of Section 53-2.1 of Subpart 53-2 is amended to read as follows:

(c) The preliminary information shall be provided to the prospective purchaser at or prior to the time an application is taken and shall be signed and dated by the agent or broker and the applicant and a copy of the preliminary information shall be attached to the application submitted to the insurer. Notwithstanding the foregoing, no applicant for life insurance shall be prevented or delayed in effecting or applying for coverage by the requirements of this Subpart. In such cases where prior to application it is impractical to provide any items prescribed by this Subpart, such items may be estimated in good faith or furnished as soon thereafter as practical prior to the delivery of policy.

Paragraph (2) of Section 53-2.2(a) of Subpart 53-2 is amended to read as follows:

(2) the name and address of the insurance agent or broker, or, if no agent or broker is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary;

The existing text of Section 53-2.6 of Subpart 53-2 is redesignated as subdivision (a) of Section 53-2.6 and a new subdivision (b) is added to read as follows:

(b) Where an insurance broker is involved, the insurer or the broker may include a separate notice that states as follows: "Where the term 'agent' is used in the Life Insurance Buyer's Guide or in the addendum to such guide, the term 'agent' shall also mean an insurance broker."

Paragraph (1) of Section 53-3.3(d)(1) of Subpart 53-3 is amended to read as follows:

(1) A statement to be signed and dated by the applicant or policyowner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent or broker has told me they are not guaranteed."

The opening paragraph of Section 53-3.3(f) of Subpart 53-3 is amended to read as follows:

An illustration for a policy that has a contract premium and which shows a premium outlay based on current or median policy cost factors or current or median dividend scales which permits a suspension of premium payments prior to the maturity or final expiration date shall be presented only in conjunction with another illustration setting forth a continuous premium payment pattern based on current, median and guaranteed policy cost factors or based on current, median and zero dividend scales for the contract premium. As one alternative, an insurer may utilize a single basic illustration showing a suspension of premium if the numeric summary shows premium payments payable to a specific policy year on a current, median and guaranteed basis. As a second alternative, the insurer may use a single basic illustration depicting the full contract premium being paid for the period required under the policy with both a full pay and abbreviated-pay values included in the numeric summary. As a third alternative, an insurer may elect to use a disclosure document, in conjunction with the supplemental illustration, to be signed by the agent or broker and the applicant, which explains in narrative form that: the requirements to pay policy premiums are not canceled, forgiven or waived; the operation of the suspension of premiums is contingent upon current non-guaranteed factors remaining unchanged, which may or may not occur; a brief description of the factors; and hypothetical examples for issue age 50 with reduction in the current non-guaranteed factors of 25% and 50% as well as an example which shows the need to continue premium payments in order to maintain the policy in force beyond the illustrated premium suspension

date. In addition, the insurer shall provide with any illustration showing a suspension of premium:

Subdivision (c) of Section 53-3.5 of Subpart 53-3 is amended to read as follows:

(c) If the basic illustration or revised illustration is sent to the applicant or policyowner by mail from the insurer, it shall include instructions for the applicant or policyowner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. It is not necessary to obtain the signature of the agent or [producer] broker. The insurer's obligation under this Subpart shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

Subdivision (b) of Section 53-3.6 of Subpart 53-3 is amended to read as follows:

(b) If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent or broker. If you do not receive a current illustration of your policy within 30 days from the date of your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

Paragraph (2) of Section 53-3.7(f) of Subpart 53-3 is amended to read as follows:

(2) that the company has provided its agents or brokers with information about the expense allocation method used by the company in its illustrations and disclosed as required in Section 53-3.7(c)(6) of this Subpart.

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Second Amendment to Part 53 of Title 11 NYCRR (Regulation No. 74), promulgated by me on, May 30, 2003, pursuant to the authority granted by Sections 201, 301, 308, 1313, 2123, 2208, 2405, 3201, 3203, 3209, 3219, 3222, 4221, 4223, 4226, 4231, 4232, 4240, 4510, 4511, 4513 and 4518 of the Insurance Law, Section 263 of the Banking Law of

the State of New York, Chapter 505 of the Laws of 2000, and Chapter 13 of the Laws of 2002, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure, prior notice of the proposed amendment was published in the State Register on March 19, 2003. No other publication or prior notice is required by statute.

Gregory V. Serio
Superintendent of Insurance

Dated: May 30, 2003