

Contingent Deferred Annuities (CDAs) – Form Filings

Over the past several years, a product innovation has become increasingly visible and a working definition is gaining acceptance. For the purpose of this guidance, “Contingent Deferred Annuity” means an annuity contract that establishes a life insurer’s obligation to make periodic payments for the annuitant’s lifetime at the time designated investments, which are not owned or held by the insurer, are depleted to a contractually-defined amount due to contractually-permitted withdrawals, market performance, fees and/or other charges. Note that this definition is narrower, at least with respect to group contracts, than the Department checklist definition for group Synthetic GICs (i.e. group annuity contracts that establish the insurer’s obligations by reference to a segregated portfolio of assets that is not owned by the insurer.) The Department believes it would be unreasonable for an insurance company or fraternal benefit society to conclude that CDAs fall within the scope of deregulated forms. To our knowledge, all CDAs issued in Pennsylvania are written on forms that have been affirmatively approved. Please be advised that CDAs must be filed for prior approval with the Department.

Owing to unique features of the CDA, the absence of a formal regulatory definition, and possible disagreement regarding the applicability of specific laws and regulations, the Department has not completed the development of a CDA Checklist to assist filers in ensuring an efficient review process. However, the Department believes that the regulatory framework in Pennsylvania is adequate to enable the filing and approval of CDAs, even in the absence of explicit, detailed guidance. The Department is open to dialog and questions with respect to the design and provisions of CDAs, and offers informal guidance in this notification.

While a checklist is still being developed, please consider the following items prior to filing a CDA. (Please note that the guidance below is based on a group contract design.)

- The required composition of eligible investments must be clear, and must be designed to ensure reasonable stability and reliability.
- Fees and required distributions deducted directly from the investment account by the Asset Management Company must be treated as contractually-permitted withdrawals, or as a portion thereof.
- The company must provide an Amendment to the certificateholder upon acceptance by the owner of new terms and conditions.
- Any dispute or breach between the insurer and the Asset Management Company must not put at risk the benefits for which fees have been paid or scheduled.
- Consequences of action (or a failure to take timely action) on the part of the owner or certificateholder must be clearly and fully disclosed.

Please contact Tom Kilcoyne via email (tkilcoyne@pa.gov) or telephone (717-783-8695) with any questions.