

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

**Actuarial Services
Charitable Annuities**

Proposed Recodification with Amendments: N.J.A.C. 11:4-8.5 as 8.7 and 8.6 as 8.8

Proposed Repeal and New Rule: N.J.A.C. 11:4-8.2

Proposed Repeal: N.J.A.C. 11:4-8.7

Proposed New Rules: N.J.A.C. 11:4-8.3, 8.4 and 8.9

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 15e, and 17B:17-13.1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-404 .

Submit comments by December 17, 2004

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The agency proposal follows:

Summary

N.J.S.A. 17B:17-13.1 et seq. is New Jersey's law concerning charitable gift annuities. That statute permits qualified organizations as defined therein, upon being issued a special permit by the Commissioner of Banking and Insurance (Commissioner), To enter into annuity

agreements under conditions that differ from those applicable to organizations deemed to be insurers. The statute further requires these special permit holders to maintain segregated assets to be applied solely to the payment of debts and obligations with respect to the annuity agreements and, until recently, had required such segregated assets to be invested in the same manner and subject to the same restrictions as investments of domestic insurers.

P.L. 2003, c. 230, enacted on January 9, 2004 and effective immediately (the Act), amended N.J.S.A. 17B:17-13.1 et seq. by requiring the segregated account assets of special permit holders to be invested pursuant to the standards set forth in the Prudent Investor Act at N.J.S.A. 3B:20-11.1 et seq. The Prudent Investor Act requires a fiduciary, as defined therein, to invest trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. The Prudent Investor Act further incorporates the "modern portfolio theory," which specifies that a fiduciary's investment and management decisions respecting individual assets not be evaluated in isolation, but rather be made in the context of the trust portfolio as a whole, and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust. The Act now applies the same standards set forth in the Prudent Investor Act to special permit holders responsible for the investment of charitable annuity segregated account assets.

The Commissioner issued Order No. A04-107 on February 26, 2004, notifying all special permit holders of the requirements of the Act, and requiring special permit holders to provide the Department of Banking and Insurance (Department) with information concerning the manner in which they were complying with the Act. These proposed amendments implement the Act by establishing specific requirements for information to be filed with the Department relating to a

special permit holder's investment of segregated account assets in accordance with the Prudent Investor Act. The amendments include the following:

N.J.A.C. 11:4-8.2 contains definitions of terms used throughout the subchapter.

N.J.A.C. 11:4-8.3 sets forth the information required to be included in an application for a special permit, including each form of agreement the organization proposes to use when it enters into annuity agreements and a plan of operation for the segregated account. This section also includes the standards and procedure for the Commissioner's review and approval, or disapproval, of a special permit application.

N.J.A.C. 11:4-8.4 replaces existing N.J.A.C. 11:4-8.2 addressing forms of agreement. The revised section sets forth all the information required to be included in the forms of agreement, and also establishes a procedure for the use, change and replacement of agreements.

N.J.A.C. 11:4-8.7 is amended to replace the existing investment requirements for segregated assets held by a special permit holder with more detailed criteria to ensure compliance with the Prudent Investor Act.

N.J.A.C. 11:4-8.8 is amended to require that a special permit holder submit with its annual report of the segregated account its most recent audited financial statements and the Independent Auditors Report, or where unavailable, those of its parent organization.

Proposed new N.J.A.C. 11:4-8.9 requires forms of agreement that do not comply with these amendments to be refiled with the annual report for calendar year 2004 or the first fiscal year ending after December 31, 2004.

A 60-day comment period is provided on this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments should have a favorable impact on annuitants and special permit holders. The standards for the forms of agreement require that the annuity agreements contain basic information concerning the terms and conditions of the agreement, thereby eliminating any ambiguity or confusion on the annuitant's part about the product that was purchased. The more flexible prudent investor standards established in the Act, and implemented by these amendments, have resulted in an increase in the number of special permit holders in the State offering charitable annuities and investment options available to consumers.

Economic Impact

The proposed amendments should have a favorable impact on annuitants. While the Act provides special permit holders with additional flexibility to manage the assets of the segregated account, the standards for a plan of operation of the segregated account provide protection for annuitants. The standards clarify that special permit holders must establish a sound plan of operation and adhere to it. Additionally, the Commissioner has the ability to disapprove changes to the plan of operation if it is determined that the change is not consistent with the prudent investor standard established in the Act.

The proposed amendments should not have any significant impact on special permit holders, although special permit holders will be required to incur certain administrative costs related to compliance with the amendments. Prior to passage of the Act, special permit holders were required to meet the same investment standards as domestic life insurers, and were responsible for managing the assets of the segregated account or arranging for such management.

Most special permit holders had standards in place, or were in the process of reviewing their investment plan with the flexibility provided by the Act. These proposed amendments merely require that those standards be formalized in a written policy. Special permit holders will be required to incur the cost of contracting with an actuary to determine reserve valuations. While special permit holders will also be responsible for costs related to the special permit application process and the submission of agreement forms, these costs are not overly burdensome and are considerably less than those required by other states. Nevertheless, these costs are necessary and outweighed by the benefits that will accrue to annuitants as a result of a responsible plan of operation being in place and followed.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that the proposed amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The Department does not believe that the proposed amendments will have any impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

The proposed amendments will impose certain reporting, recordkeeping and other compliance requirements on special permit holders, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Those organizations seeking to become special permit holders will be required to file with the Commissioner an application, along with the forms of annuity agreements, the plan of operation of the segregated account, and additional documentation, including an annual report. Special permit holders will also be required to file with the Commissioner, and maintain, an investment plan for the segregated account. It is unlikely that special permit holders will need to hire additional employees or professional consultants to meet these requirements, although there may be certain administrative costs involved with complying. The proposed amendments do not establish any differing requirements for special permit holders dependent on size or resources because the compliance requirements established in these proposed amendments are necessary for the protection of all annuitants regardless of the size of the special permit holder with whom they deal.

Smart Growth Impact

The proposed amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 8. CHARITABLE ANNUITIES

[11:4-8.2 Forms of agreement

An applicant for a special permit shall submit, with his application to the Commissioner, a copy of each form of agreement which it proposes to issue to annuitants. If a holder of a special permit proposes to institute a new form of agreement with annuitants, the form shall first be submitted to the Commissioner for his approval before it is put into use.]

11:4-8.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Deferred annuity" means an annuity where the first annuity payment is due no earlier than one year from the issue date of the contract, and the annuity is not an immediate annuity.

"Immediate annuity" means an annuity where the first annuity payment is due not more than 13 months from the issue date of the contract.

"Reserves" means the liability established to assure that future annuity benefits can be paid.

"Surplus" means the excess of admitted assets over liabilities.

11:4-8.3 Application for a special permit

(a) A qualified organization proposing to enter into an annuity agreement pursuant to N.J.S.A. 17B:17-13.1 shall first apply to the Commissioner for approval as a special permit holder. The application shall be in a form prescribed by the Commissioner. An application shall include, but not be limited to, the following:

1. A completed application form;

2. Organizational documents, including the articles of incorporation or articles of association and bylaws;

3. The applicant's organizational chart, which shall identify the parent organization, and all subsidiaries and affiliates of the applicant;

4. The applicant's or, where not available, the applicant's parent organization's, most recent audited financial statements and the Independent Auditors Report;

5. Documentation from the Internal Revenue Service that the applicant is exempt from Federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code;

6. The most recent Internal Revenue Form 990 and/or any other annual submissions that the Internal Revenue Service may require because of the applicant's tax exempt status;

7. Documentation that the applicant is registered and current with the New Jersey Department of the Treasury as a domestic or foreign entity authorized to do business in New Jersey;

8. A copy of the Letter of Registration or the Letter of Exemption issued to the applicant by the New Jersey Department of Law and Public Safety, Division of Consumer Affairs, Charities Registration Section;

9. Evidence that the applicant has been in active operation for at least 10 years pursuant to N.J.S.A. 17B:17-13.1a;

10. Identification of any planned giving organization of which the applicant is a member;

11. The board resolution requiring the segregation of assets for annuity benefits;

12. The most recent annual statement for the segregated account, which shall demonstrate that the applicant has a surplus amount equal to the greater of 10 percent of the reserves or \$100,000 pursuant to N.J.A.C. 11:4-8.6(a)2. The statement shall be prepared on a calendar year basis unless the applicant is requesting to file this and all future statements on a fiscal year basis. If no annuities have been issued in any state, the applicant may file as a replacement for the annual statement documentation that a segregated account has been established with assets of at least \$100,000;

13. The name of the qualified actuary and/or actuarial firm with which the applicant has contracted for the purpose of reserve valuations;

14. If the applicant has any inforce annuity agreements:

i. A Certificate of Valuation of the Annuity Liabilities signed by a qualified actuary and notarized; and

ii. A statement signed by the actuary setting forth his or her opinion as to the adequacy of the reserves reported in the annual statement;

15. The workpapers demonstrating the calculation of the reserves;

16. If the applicant seeks a waiver of the actuarial opinion requirement pursuant to N.J.A.C. 11:4-8.8(b), the information in (a)16i through iii. below. Where such waiver is requested, the applicant shall not be required to file the information set forth at (a)13 and 14 above unless notified by the Department that the waiver has been denied.

i. The name of the individual or the firm responsible for determining the reserve liability;

ii. A description of the individual or firm's experience; and

iii. The software to be used to calculate the reserve liability.

17. A copy of each form of agreement that the organization proposes to use when it enters into annuity agreements with donors as described at N.J.A.C. 11:4-8.4;

18 A plan of operation for the segregated account, including the investment strategy pursuant to N.J.A.C. 11:4-8.7;

19. The maximum annuity rates that the applicant intends to use for each form of annuity. If the applicant does not use the rates adopted by the American Council on Gift Annuities as permitted for annuities issued in New Jersey, a demonstration that the rates meet the requirements of N.J.A.C. 11:4-8.5(a); and

20. A non-refundable application fee of \$100.00 made payable to "State of New Jersey -- General Treasury."

(b) An application for a special permit shall be submitted to:

Office of Life and Health
Attention: Charitable Annuity Review
NJ Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325

(c) The Commissioner shall review an application for a special permit and notify the applicant in writing of any deficiencies within 60 days of receipt. An applicant shall address any deficiencies in its application within 60 days of receipt of such notice.

(d) Upon receipt and review of a complete application, the Commissioner shall issue a special permit to an applicant if he or she finds that the applicant meets the following standards:

- 1. The applicant has provided a complete application;**
- 2. The applicant has demonstrated that it is a qualified nonprofit domestic or foreign corporation or association organized without capital stock or not for profit, engaged solely in bona fide charitable, religious, missionary, educational or philanthropic activities, and has been in active operation for at least 10 years;**
- 3. The forms of agreement proposed by the applicant comply with the requirements at N.J.A.C. 11:4-8.4(b);**
- 4. The proposed rates comply with the requirements at N.J.A.C. 11:4-8.5;**
- 5. The applicant has demonstrated that it currently meets the surplus and reserve requirements at N.J.A.C. 11:4-8.6;**
- 6. The applicant has demonstrated the expertise to administer the charitable annuities or has contracted with a third party satisfactory to the Commissioner to do so;**
- 7. The applicant has demonstrated adequate financial soundness to meet its charitable annuity obligations on an ongoing basis; and**
- 8. The plan of operation for the segregated account includes all the information required at N.J.A.C. 11:4-8.7, and satisfies the Commissioner that the standards at N.J.S.A. 3B:20-11.1 et seq. have been met.**

(e) An applicant shall be notified in writing of the decision on an application within 90 days of the Commissioner's receipt of a complete application.

(f) The Commissioner may deny an application for a special permit if the applicant fails to meet any of the standards in this subchapter or for any other reasonable grounds upon which the Commissioner has determined that the issuance of charitable annuities by the applicant would be hazardous to the citizens of this State. If the special permit is denied, the Commissioner shall notify the applicant in writing of the reason(s) for the denial.

11:4-8.4 Forms of agreement

(a) An application for a special permit shall include a copy of each form of agreement that the applicant proposes to issue to annuitants. If a special permit holder intends to change or replace an existing agreement, or add a new form of agreement, the special permit holder shall not use the new form unless it has been filed with the Commissioner at least 30 days prior to its intended use and the Commissioner has not disapproved it within that 30 day period. The new form shall be submitted to:

Office of Life and Health
Attention: Charitable Annuity Review
NJ Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325

(b) Each form of agreement shall include, but not be limited to, the following:

- 1. A distinct alphanumeric form number on each page;**
- 2. The official name and address of the issuing charity prominently**

displayed;

3. The age and/or birthdate of the annuitant(s);

4. A provision for corrective action if the annuitant has made:

i. A misstatement of age; or

ii. A misstatement of age or sex if a distinction is made between male

and female payout rates;

5. A statement that the agreement is governed by the laws of the State of

New Jersey;

6. A clear identification of, and differentiation between, agreements that

allow for immediate payments, and those for which payments are deferred;

7. A statement that payments shall terminate upon the death of the last

surviving annuitant; and

8. A statement that the organization's obligation to make payment shall

terminate if all annuitants are deceased prior to the contractual date that payments are scheduled to commence.

Recodify existing N.J.A.C. 11:4-8.3 and 8.4 as **8.5 and 8.6**

11:4-[8.5] **8.7** Compliance with investment requirements

(a) The segregated assets held by a special permit holder shall be invested [in the same manner and subject to the same restrictions as provided in N.J.S.A. 17:20 for domestic insurers, unless more restrictive provisions are contained in applicable statutes regulating any such special permit holder.] **pursuant to the standards set forth at N.J.S.A. 3B:20-11.1 et seq. An application for a special permit shall include the applicant's plan of operation for the**

segregated account. The plan of operation shall include, but not be limited to, the following:

1. A statement of the amount of the gift to be placed in the segregated account. If such amount is less than the entire gift, the method for determining such amount;

2. Standards for monitoring the adequacy of the segregated account to meet the requirements of N.J.A.C. 11:4-8.6 on a continuous basis;

3. A contingency plan for additional sources of funding if the segregated account falls below the statutorily required minimum amount; and

4. An investment plan for the segregated account, which shall include:

i. The person(s) responsible for oversight of the investments, and whether such responsibility is to be delegated;

ii. Allocation of assets by investment categories;

iii. Standards for investment quality; and

iv. Duration and liquidity of assets.

(b) Any proposed change(s) to a plan of operation of the segregated account, or to the investment plan of the segregated account, shall not be implemented unless the special permit holder has filed the changes with the Commissioner at least 30 days prior to the intended date of implementation, and the Commissioner has not disapproved the changes within that 30-day period. The proposed change(s) shall be submitted to:

Office of Life and Health
Attention: Charitable Annuity Review
NJ Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325

11:4-[8.6] **4-8.8** Annual report

(a) - (d) (No change.)

(e) Each special permit holder shall submit, with the annual report of the segregated account required in (a) above, a copy of [its audited annual report for the entire operations of the special permit holder] **the applicant's or, where not available, the applicant's parent organization's, most recent audited financial statements and the Independent Auditors Report.**

[11:4-8.7 Special permit

Anything in this subchapter to the contrary notwithstanding, no organization referred to by N.J.S.A. 17B:17-13.1 may enter into annuity agreements with donors until it has satisfied the Commissioner of Insurance that it satisfies all of the requisite provisions of the law and has received from the Commissioner a special permit authorizing it to do such business.]

11:4-8.9 Effect on previously filed forms

Forms previously filed or approved by the Commissioner pursuant to N.J.S.A. 17B:17-13.1 that are not in compliance with this subchapter shall be refiled with the annual report for calendar year 2004 or the first fiscal year ending after December 31, 2004.

Recodify existing N.J.A.C. 11:4-8.8 and 8.9 as **8.10 and 8.11**

(No change in text.)

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