

Section 5. Separability

If any provision of this Act or its application to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of the provision to other persons or circumstances shall not be affected.

Section 6. Effective Date

This Act shall be effective [insert date].

ATTACHMENT ONE-C

**RULES GOVERNING THE USE OF ILLUSTRATIONS
IN CONNECTION WITH THE SALE OF LIFE INSURANCE**
Draft: 6/3/94

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Section 1. Purpose

The purpose of this regulation is to provide rules for life insurance policy illustrations based upon policy guarantees and past performance. The rules provide illustration formats, prescribe standards to be followed when illustrations are used, and require disclosures to be used in connection with illustrations. The goal of this rule is that illustrations accurately describe policies and be understandable by purchasers of life insurance without explanation by a producer or others possessing specialized insurance knowledge.

Section 2. Authority

This regulation is issued based upon the authority granted the Commissioner under [cite appropriate enabling legislation].

Section 3. Applicability and Scope

This regulation shall apply to all group and individual life insurance policies and certificates marketed with the aid of an illustration, except individual and group annuity contracts, variable life insurance as defined in [cite Article II, Section 19 of the NAIC Variable Life Insurance Model Regulation] and credit life insurance.

Section 4. Definitions

- A. "Guaranteed benefits" means those benefits which the insurer guarantees as provided in the policy contract.
- B. "Guaranteed cash value" means the minimum values guaranteed by the policy that will be available on surrender of the contract, assuming all required or illustrated premiums have been paid to the date of surrender.
- C. "Illustration" means any numerical or graphic description of the performance over time of policy values or benefits which is:
 - (1) Used by a producer or insurer to sell a policy; or
 - (2) Represented by the producer or insurer as describing the past or future performance of a policy.
- D. "Net increase" means the total amount of all increases in a policy's value (e. g., excess interest or dividend credits).

E. "Past performance" means a demonstration of amounts credited to a policy during each year that a policy form has been issued, including both guaranteed and non-guaranteed values.

F. "Qualified actuary" means a member in good standing of the American Academy of Actuaries or any other individual acceptable to the Commissioner.

Section 5. Illustration Format Standards

Regardless of the medium used in a sales presentation, any illustration must be incorporated into a written document in the following format:

A. Each page of an illustration, including any explanatory notes or pages, shall be numbered, showing its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").

B. The illustration shall be clearly labeled "Life Insurance Illustration," identify the insurer, the generic type of life insurance, the company product name, if different, and the policy form number.

C. The illustration shall have a cover page, numbered as page one, and containing the following:

(1) The rating classification upon which the illustration is based, a narrative explanation of this classification, and the percentage of insureds who are covered by this form and are included in this as well as a better rating classification. In calculating the percentage of insureds covered, the insurer should use actual experience or, in the absence of meaningful actual experience during the first year after issue of a new policy, reasonably anticipated experience.

(2) A statement to be signed and dated by the applicant as follows: "I have received a copy of this illustration of the life insurance policy for which I have applied."

(3) A statement to be signed and dated by the insurance producer as follows: "I certify that this illustration is appropriate for the life insurance policy applied for and that no representations have been made that are inconsistent with the illustration."

Section 6. Certification by the Company; Disclosure

A. At or prior to delivery of a life insurance policy, an insurer shall provide the applicant with a second copy of the illustration provided under Section 5, which is certified by the company as:

- (1) Appropriate for the rating classification of the applicant and the policy issued;
- (2) Accurately describing the guaranteed values and past performance of the policy; and
- (3) Prepared in compliance with the standards of the Actuarial Standards Board.

B. An officer of the insurer shall sign and date the certification required under Subsection A. The officer of the insurer may authorize the use of his facsimile signature.

C. An insurer may comply with Subsection A by substituting a different illustration than the illustration signed by the applicant under Section 5, but only if:

- (1) The substitution is necessary because the policy issued is other than that illustrated at the time of sale;
- (2) The substituted illustration complies with Section 5 and is signed and dated by the producer and the applicant as required by Section 5C; and
- (3) The substituted illustration includes on the cover page a clear and prominent disclosure that it is a revised illustration and that it should be carefully reviewed prior to acceptance of the policy.

Section 7. Standards for Illustrations

A. An illustration shall show guaranteed values, in a manner consistent with Appendix B, as follows:

- (1) Producer's name and address;
- (2) Insured's name;
- (3) Age and sex of insured;
- (4) Underwriting class;

- (5) Columns as follows:
- (a) Policy years listed annually for years one to twenty (20) and five-year intervals beginning at age sixty (60) and ending at age 100, if applicable;
 - (b) Premium for each year sufficient to produce an endowment at age 100 with totals at year ten (10) and year twenty (20) and age sixty-five (65);
 - (c) Net cash surrender value for each year; and
 - (d) Death benefit for each year.

B. Illustrations of past performance shall be utilized in connection with the sale of a policy subject to the requirements of this section.

(1) Illustrations of past performance shall be the results of the application of the individual assumptions actually used by the company to derive the nonguaranteed policy benefits for the prior periods being illustrated.

(a) If the company used consistent assumptions for all policy forms, those assumptions may be applied to prepare an illustration of past performance to be used in connection with the sale of any current policy form. If the company is the result of a corporate merger and one predecessor company predominates, the merger alone will not be sufficient reason to construe that assumptions are not consistent.

(b) If the company did not use assumptions that were consistent for all policy forms, an illustration of past performance must be based only on the assumptions used for the policy form being sold. The term policy form shall include all forms issued by the company that are identical with regard to all provisions that affect the illustration of past performance.

(c) Application of these assumptions is limited to illustrating the actual periods when the assumptions were used.

(2) Illustrations of past performance are not to be utilized to illustrate future performance of the policy form being sold. Each illustration must contain the following in prominent form:

"This illustration of past performance shows the actual results achieved by the company for the periods shown. Future results may be better or worse than the results shown."

(3) Illustrations of past performance may be in tabular, graphic or narrative form or any combination of those forms.

(4) Each illustration of past performance shall contain the following information:

(a) Individual characteristics of the insured that affect results such as:

- (i) Gender;
- (ii) Smoker or non-smoker status;
- (iii) Issue age;
- (iv) Underwriting rating; or
- (v) Issue date;

(b) Policy definition characteristics such as:

- (i) Policy form description;
- (ii) Face amount;
- (iii) Premium amounts;
- (iv) Premium mode;
- (v) Ancillary benefits;
- (vi) Dividend option; or
- (vii) Other options exercised such as policy loans;

- (c) Policy Year
- (d) Premium paid;
- (e) Death benefits;
- (f) Net cash value;
- (g) Net increase;
- (h) Rate of increase;
- (i) The following explanations of the information disclosed:
 - (i) *"Net cash value is the total cash value of a policy less any policy loans."*
 - (ii) *"Net increase is the net cash value minus the net cash value at the end of the prior year and minus the premium paid."*
 - (iii) *"Rate of increase is the ratio of the net increase to the sum of the net cash value at the end of the prior year and the premium paid."*

Section 8. Record Retention

An insurer shall maintain a copy of the signed illustration delivered with the policy until three (3) years after the policy is no longer in force.

Section 9. Prohibitions

The following actions by companies or their producers are prohibited:

- A. Representing the policy as anything other than life insurance;
- B. Making any representation about the future performance of the policy, including but not limited to potential dividends, rate of return or cash value other than those which are guaranteed by the company and described in the illustration.

Drafting Note: The working group recognizes that it may be desirable to allow some demonstration of the mechanics of the policy. The working group has asked the technical resources advisors to suggest precisely circumscribed exceptions to Subsection B which would permit such a demonstration.

- C. Making any representation regarding the past performance of the policy other than the representations contained in the illustration;
- D. Using a policy illustration which does not comply with the requirements of Section 5 of this rule;
- E. Providing an applicant with an incomplete policy illustration;
- F. Representing in any way that contractual premium payments will not be required for each year of the policy in order to maintain the illustrated death benefit; or
- G. Illustrating any product not identified pursuant to Section 5B.

Section 10. Annual Report

The insurer shall provide annually a notice to the insured that he or she may request a report which compares the illustrations made at the time of sale with the actual results attained since the last report was prepared. The notice shall be given no later than thirty (30) days after each anniversary date. Any report requested shall contain information similar in format to the original illustration and any changes which affect policy values or premium outlay requirements must be explained.

Section 11. Actuarial Standards

Illustrations shall meet standards with regard to measurement of past performance established by the Actuarial Standards Board. Each insurer shall require a qualified actuary to certify that illustrations used by the company meet these standards. In the event that the Actuarial Standards Board does not develop standards that are acceptable to the Commissioner, the Commissioner may prescribe alternative standards to be met in connection with illustrations.

Section 12. Separability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected thereby.

Section 13. Effective Date

This regulation shall become effective one year after the date of adoption, and shall apply to contracts sold on or after the effective date.

Appendix A

Company Name

LIFE INSURANCE POLICY ILLUSTRATION

Proposed Insured: _____ Age/Sex: _____
Rating Class: _____ Amount of Insurance: _____
Plan Type/Name: _____
Dividend Option: _____

This is an illustration for a [Twenty-Pay Whole] life insurance policy. Payment of premiums is required as follows: [Annually for twenty (20) years].

The purpose of this illustration is to help you understand how the policy works. In comparing different policies, you should not rely solely upon illustrations. You should also consider the financial stability of the company, past performance, the service you expect to receive and the specific policy features you want.

If this illustration demonstrates the policy's past performance, you should understand that future results may be better or worse than the past. Because the values and benefits shown in the illustration will change over time, you should keep this illustration with the policy. The company will annually provide a report that shows account value. You should compare the actual results with the information presented in the illustration. Also, you should periodically contact the company or your agent to check on the status of your policy.

Explanation of Rating Classification. Health history, occupation and recreational activities are used to determine the proposed insured's Rating Class. This illustration is based upon [an average likelihood of claim] designated as [STANDARD]. [Ninety percent] of insureds covered by this type of policy are rated [Standard or better].

I (we) have received a copy of this illustration of the life insurance policy for which I (we) have applied.

Applicant Date

Co-Applicant Date

I certify that this is the illustration which is appropriate for the life insurance policy applied for and that no representations have been made that are inconsistent with the illustration.

Agent Date

Appendix B

**ABC LIFE INSURANCE COMPANY
ILLUSTRATION OF GUARANTEED BENEFITS**

This table shows guaranteed benefits under a policy issued by the company on the date shown. Future results may be better than shown but the company promises they will not be worse.

Participating Whole Life Insurance Policy
Policy Form xyz1234

Producer's Name:
Insured's Name:

Underwriting Class:

	Individual Rating Characteristics		Policy Definition
Gender:	Male	Annual Premium:	\$1,000.00
Rating:	Nonsmoker	Death Benefit:	\$100,000.00
Age:	Preferred		
Issue Date:	35		
	01/01/95		

End of Policy Year	Premium Paid	Death Benefit	Net Cash Value	Net Increase	Rate of Increase
1	\$1,000	\$100,000	\$325	\$(675)	-67.50%
2	1,000	100,000	1,350	25	1.89%
3	1,000	100,000	2,425	75	3.19%
4	1,000	100,000	3,550	125	3.65%
5	1,000	100,000	4,725	175	3.85%

The Net Cash Value is the total guaranteed cash value of the policy minus any policy loans. This is the amount that is guaranteed to be available upon surrender of the policy.

The Net Increase is the Net Cash Value minus the Net Cash Value at the end of the prior year and minus the premium paid.

The Rate of Increase is the ratio of the Net Increase to the sum of the Net Cash Value at the end of the prior year and the Premium Paid.

Appendix C

**ABC LIFE INSURANCE COMPANY
ILLUSTRATION OF PAST PERFORMANCE**

This table shows what actually happened under a policy issued by the company on the date shown. Future results may be better or worse.

Participating Whole Life Insurance Policy
Policy Form xyz1234

	Individual Rating Characteristics		Policy Definition
Gender:	Male	Annual Premium:	\$1,000.00
Rating:	Nonsmoker	Death Benefit:	\$100,000.00
Age:	Preferred	Dividend Option:	Paid-up Additions
Issue Date:	35		
	01/01/90		

End of Policy Year	Premium Paid	Death Benefit	Net Cash Value	Net Increase	Rate of Increase
1	\$1,000	\$105,000	\$350	\$(650)	-65.00%
2	1,000	112,000	1,450	100	7.41%
3	1,000	121,000	2,650	200	8.16%
4	1,000	131,000	3,950	300	8.22%
5	1,000	142,000	5,250	300	6.06%

The Net Cash Value is the total cash value of the policy minus any policy loans. This is the amount that is available upon surrender of the policy.

The Net Increase is the Net Cash Value minus the Net Cash Value at the end of the prior year and minus the premium paid.

The Rate of Increase is the ratio of the Net Increase to the sum of the Net Cash Value at the end of the prior year and the Premium Paid.

ATTACHMENT ONE-D

Life Disclosure Working Group
of the Life Insurance (A) Committee
June 3, 1994

The Life Disclosure Working Group met by conference call at 2 p.m. on June 3, 1994. Bob Wright (Va.) chaired the meeting and the following working group members or their representatives participated: Don Koch (Alaska); John Montgomery (Calif.); Roger Strauss (Iowa); Lester Dunlap (La.); Tony Higgins (N.C.); Noel Morgan (Ohio); and Commissioner Robert Wilcox (Utah). Carolyn Johnson (NAIC/SSO) also participated.

Bob Wright (Va.) asked the working group members to consider first the Life Insurance Illustrations Model Act. He asked if there were any changes that the working group members recommended. He also asked if the members were comfortable with the revision to Section 4—Penalties, and the reference to the Unfair Trade Practices Act. Members of the working group agreed that the provision was written in an appropriate manner. Mr. Wright next asked whether Section 3—Authority to Promulgate Regulation should be changed. He suggested changing the provision to read “the commissioner may promulgate regulations...” After some discussion the working group members decided to leave “the commissioner shall promulgate regulations...”

Mr. Wright asked the working group members to review with him the Rules Governing the Use of Illustrations in Connection With the Sale of Life Insurance. Mr. Wright asked Carolyn Johnson (NAIC/SSO) to interject comments throughout the document that had been received from the working group members in response to the draft they had received the prior week.

Section 1. Purpose

Noel Morgan (Ohio) suggested changing the sentence that read “the objective of this rule is that illustrations adequately describe policies...” to “the goal of this rule is that illustrations accurately describe policies...” Mr. Morgan was responding to comments received which suggested that using the term “objective” would create a legal standard which could be challenged more easily. The working group agreed to this change.

Ms. Johnson said one member had commented that the objective of the last sentence saying that there should be understanding without any explanation by a producer was a laudable goal but probably not attainable. Mr. Wright said he had received a comment that the sentence denigrated producers. After some discussion the working group members decided that there was no intention to downgrade the services provided by a producer and they did not think this sentence did that, so they decided to leave the sentence in the draft.

Section 4. Definitions

Ms. Johnson said a comment had been received on Section 4 suggesting that the definition of “guaranteed values” actually referred to “guaranteed surrender values.” Commissioner Robert Wilcox (Utah) agreed the working group was defining guaranteed surrender values, but said this was only one guaranteed benefit of a policy. He said a death benefit was also a guaranteed benefit. Mr. Wright asked if it would be appropriate to add another definition of guaranteed benefits. Commissioner Wilcox suggested adding the definition of “guaranteed cash value” from the set of definitions provided by the American Academy of Actuaries, as well as a broader definition. The working group decided to add a definition that was broader and to use the American Academy of Actuaries definition for guaranteed cash values.

The working group next looked at the definition of illustration and the suggestions for alternatives that had been received. The working group decided that the American Academy of Actuaries definition and the resource group definition were both inappropriate because the definitions included non-guaranteed elements. It was decided the provision should apply to the producer and the insurer, to cover direct sales of life policies. The working group also considered whether it was best to use the word “sell” in the first paragraph, and the decision was made to leave the definition as written with the addition of the words “or insurer” after each instance where the word producer appears. Ms. Johnson said she had received a telephone comment the prior day suggesting that this regulation should not apply to term insurance where illustrations were designed to compare the prices of different companies. She asked whether this definition included that type of illustration. Mr. Wright said the dividing line was in the term “performance over time.” If the term insurance showed only straight premiums that were not dependent on the performance of the policy, the illustration would not be included in this definition.