

RULE 90
CHARITABLE ANNUITIES REQUIREMENTS AND REPORTING

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SECTION 1. PURPOSE

The purpose of Rule 90 is to establish requirements and standards for organizations and Arkansas cities, towns, municipalities, and counties to obtain and maintain required permits and offer charitable annuities to Arkansas residents, non-residents or other legal entities to benefit the bona fide public charitable, educational or philanthropic agencies or programs. This rule will also clarify procedures and standards for duly organized domestic or foreign nonstock corporations or associations conducted without profit to obtain and maintain required permits and offer charitable annuities to Arkansas residents, non-residents or other legal entities to benefit the bona fide charitable, religious, educational, and philanthropic activities' needs.

SECTION 2. AUTHORITY

This Rule is issued under the authority vested in the Commissioner by Ark. Code Ann. §23-61-108, the Arkansas Administrative Procedure Act, codified at Ark. Code Ann. §§25-15-201, et seq., and Ark. Code Ann. §23-64-304(a), as amended by Act 1203 of 2003 and Act 1697 of 2005, and Ark. Code Ann. § 23-63-201, as amended by Act 496 of 2007. The information called for by this Rule and Regulation is hereby declared to be necessary and appropriate in the public interest and for the protection of the annuity contract holders in this State.

SECTION 3. DEFINITIONS

A. "Commissioner" refers to the Arkansas Insurance Commissioner.

B. A "corporation" is any duly organized domestic or foreign nonstock corporation or association conducted without profit.

C. A "municipality" is any city, town, municipality, or county, or two (2) or more such entities acting pursuant to an Interlocal Cooperation Agreement authorized under Arkansas Code §§ 25-20-101 et. seq.

D. "Permit Applicant" is any corporation or Arkansas municipality that is applying for a permit to sell or distribute fixed-dollar life-only charitable annuity agreements.

E. "Municipal Permit Applicant" is any Arkansas municipality that is applying for a permit to sell or distribute fixed-dollar life-only charitable annuity agreements payable from non-tax revenues of the municipality.

F. "Corporate Permit Applicant" is any corporation conducted that is applying for a permit to sell or distribute fixed-dollar life-only charitable annuity agreements.

G. "Permit Holder" is any corporation or Arkansas municipality that holds an Arkansas permit to sell or distribute fixed-dollar life-only charitable annuity agreements.

H. "Municipal Permit Holder" is any Arkansas municipality that holds an Arkansas permit to sell or distribute fixed-dollar life-only charitable annuity agreements payable from non-tax revenues of the municipality.

I. "Corporate Permit Holder" is any corporation that holds an Arkansas permit to sell or distribute fixed-dollar life-only charitable annuity agreements.

J. "Municipal Program" is a public charitable, educational, or philanthropic agency or program operated by a municipality that generates non-tax revenues.

SECTION 4. PARTICIPANTS

A. This Rule will allow corporate permit applicants to apply for a special permit to make fixed-dollar life-only annuity agreements with donors to their corporation that:

1. Has engaged in active operation for at least five (5) years prior to receiving the permit which have been solely engaged in operation of public charitable, religious, missionary, educational or philanthropic agencies or programs; or
2. Is affiliated with a corporation or municipality which has been actively engaged in operation of public charitable, religious, missionary, educational or philanthropic agencies or programs for five (5) years; and
3. Has maintained an adequate level of management expertise which is readily available to the entity requesting the permit.

B. This Rule will also allow municipal permit applicants to apply for a special permit to make fixed-dollar life-only annuity agreements payable from non-tax revenues of the municipality with donors to their municipal programs provided the municipal permit applicant has been actively involved for at least (5) years prior to receiving the permit in the operation of public charitable, educational or philanthropic agencies or programs (including, but not limited to, libraries, museums, and governmentally owned public hospitals).

C. No corporation or Arkansas municipality shall make or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this subsection.

SECTION 5. EXEMPTIONS

A. No municipality or corporation organized under the laws of another state shall be permitted to make annuity agreements in this state unless it complies with all requirements of this subsection imposed upon municipalities or corporations, except that a municipality or corporation organized under the laws of another state may invest its reserves and surplus funds in securities permitted by the laws of its state of domicile.

B. No municipality or corporation shall make, sell, distribute or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this Rule.

SECTION 6. APPLICATION AND ANNUAL STATEMENT - GENERAL REQUIREMENTS.

A. Application A and Annual Statement B are intended to be guides in the preparation of the application and annual reports required by the Act. The application and annual statement filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

B. Two (2) complete copies of each statement including exhibits and all other papers and documents filed as a part thereof shall be filed with the Commissioner of the State of Arkansas by personal delivery or mail addressed to:

Insurance Commissioner of the State of Arkansas
1200 West Third Street
Little Rock, Arkansas 72201-1904
Attention: Finance Division.

At least one of the copies shall be manually signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application and annual statement.

C. Application and annual statement should be prepared on paper 8 1/2" x 11" in size. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Application and annual statement shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

SECTION 7. APPLICATION AND ANNUAL STATEMENT - INCORPORATION BY REFERENCE, SUMMARIES AND OMISSIONS.

A. Information required by any item of Application A and Annual Statement B, may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Application A and Annual Statement

B, provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

B. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner which was filed within three (3) years and may be qualified in its entirety by such reference. In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents need be filed with a schedule identifying the omitted documents. The schedule shall identify the material details in the omitted documents that vary from the filed document.

SECTION 8. APPLICATION AND ANNUAL STATEMENT - ADDITIONAL INFORMATION AND EXHIBITS.

In addition to the information expressly required to be included in Application A and Annual Statement B, the Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as he or she may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Application A and Annual Statement B shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

SECTION 9. REQUEST FOR ANNUITY PERMIT

Before making an annuity agreement, every permit applicant shall file an application in a form similar to that found in Application A to the Commissioner for his or her approval information regarding the following:

A. A description of annuity rates in the form of:

1. A schedule of its maximum annuity rates that shall be computed on the basis of the annuity standard adopted by it for calculating its reserves; or

2. A statement certifying that it adopts and will adhere to the annuity rates as published from time to time by the American Council on Gift Annuities or its successor until the corporation or municipality advises the Commissioner to the contrary in writing and files a schedule of its new proposed maximum annuity rates for approval.

B. A copy of the current form or forms of the Agreement to be issued to annuitants in the State of Arkansas.

C. Complete, audited financial reports of the permit applicant for each of the five (5) years preceding the application. For a municipality, the report shall cover the municipal program included in the

application. The report should be prepared by an independent Certified Public Accountant in accordance with generally accepted accounting principles.

D. A certified copy of resolution of the permit applicant's directors' or governing board's resolution requiring segregation of assets to ensure that annuity funds will not, without exception, be applied towards the payment of other debts or obligations of the permit applicant.

E. The form filings and approvals shall meet the requirements of §§ 23-79-109 and 23-79-110.

SECTION 10. REQUIREMENTS FOR PERMIT HOLDERS

A. Reserves

1. Each corporation or municipality shall maintain reserves with respect to the annuity or income stream that it has agreed to pay to a charitable donor by:
 - a. Using the manner set forth in the Standard Valuation Law for Life Insurance and Annuities, § 23-84-101 et seq., concerning the standard valuation law for life insurance and annuities; or
 - b. Using the present value of all future benefits to be paid to the donor annuitant based upon the most recent mortality table published by the Internal Revenue Service; or
 - c. Maintaining account reserves in an amount equal to the aggregate values determined at the dates of contribution of all assets received from donors with respect to annuities for annuitants who are then living.
2. The municipality shall maintain reserves as part of the separate assets of the municipal program.
3. If the Commissioner finds the reserve established by a permit holder inadequate at any time, the Commissioner shall order the permit holder to increase its reserve accordingly, or the Commissioner may stipulate the reserving method for the permit holder to rectify the reserve deficiency.
4. In determining reserves, a deduction shall be made for all or any portion of an annuity risk that is reinsured by a life insurance company authorized to do business in this state.

B. Accounts

1. Unless otherwise permitted by the Commissioner, each permit holder shall maintain a segregated account or accounts for its charitable gift annuities.
2. The segregated account or accounts shall be used solely to pay the charitable gift annuity obligations of the permit holder.

C. Assets

1. Each permit holder shall maintain net admitted assets at least equal to the greater of:

- a. The sum of its reserves on its outstanding agreements, all other liabilities, and a surplus of at least ten percent (10%) of the reserves; or
 - b. The amount of fifty thousand dollars (\$50,000); or
 - c. At least equal to the amount of the reserves plus all other outstanding liabilities, if reserves have been calculated by maintaining reserves in an amount equal to the aggregate values determined at the dates of contribution of all assets received from donors with respect to annuities for annuitants who are then living.
2. The required admitted assets shall be invested:
 - a. Only in securities permitted by the provisions of §§ 23-63-801 -- 23-63-833, 23-63-835, 23-63-836, 23-63-839, and 23-63-840; or
 - b. In accordance with the provisions of the prudent investor rule stated in §§ 24-2-610 -- 24-2-619.
 3. The investments shall be held by a custodian in accordance with § 23-69-134(b)(4).

D. Annual Statements

1. All permit holders shall be required to file an annual financial statement of their operations and accounts and schedule of outstanding annuities with applicable reserves within ninety (90) days of the end of their fiscal year.
2. The statement shall be prepared by a certified public accountant in accordance with generally accepted accounting principles detailing the financial condition and status of the corporation or municipal program as of the conclusion of its most recent fiscal year.
3. For permit holders investing in assets under Section 10(C)(2)(b) each annual statement shall be accompanied by:
 - a. A description of the permit holder's investment philosophy for charitable gift annuities and how the investments of the permit holder are designed to meet future charitable gift annuity obligations;
 - b. A statement from the permit holder identifying the members of the investment committee charged with making investment decisions regarding charitable gift annuity assets, including a description of each committee member's investment expertise; and
 - c. A certification of the permit holder's directors that attests that its investments and investment transactions match the organization's philosophy and meet the standards of the prudent investor rule stated in §§ 24-2-610 - 24-2-619.

SECTION 11. VIOLATIONS

If after notice and hearing the Commissioner finds that a permit holder having a permit has failed to comply with the requirements of this Rule, the Commissioner may revoke or suspend the permit or order the permit holder to cease making new annuity contracts until it complies.

SECTION 12. SEVERABILITY

Any section or provision of this Rule held by the court to be invalid or unconstitutional will not affect the validity of any other section or provision.

SECTION 13. EFFECTIVE DATE AND APPLICABILITY

The effective date of this rule is July 31, 2007.

(signed by Commissioner Julie Benafield Bowman)

JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

(July 15, 2007)

DATE

**APPLICATION A
APPLICATION FOR CHARITABLE ANNUITY PERMIT**

TO THE INSURANCE COMMISSIONER OF THE STATE OF ARKANSAS:

The undersigned, being desirous of receiving gifts of money and/or property in the State of Arkansas conditioned upon or in return for its agreement to pay an annuity to the donor or his nominee, hereby makes application for a "special" permit as specified in Ark. Code Ann. 23-63-201(d) and Arkansas Rule 90. This form shall be notarized and sworn to as true by an individual authorized to bind the corporation or association and returned to the above address, ATTN: Finance Division.

NOTE: WHENEVER AN ADDRESS IS REQUESTED, PLEASE LIST ACTUAL PHYSICAL ADDRESSES AS WELL AS MAILING ADDRESSES. PLEASE ATTACH ADDITIONAL SHEETS WHERE NECESSARY.

1. List the name, address, and phone number of the applicant organization, each Officer of the organization, each member of the organization's board of directors, board of trustees, or other individuals holding equivalent positions in the organization.
2. If applicable, please provide a corporate organizational chart, which should include all parents, subsidiaries, and affiliates of the organization applying for the special permit.
3. Provide and attach hereto a certified copy of the certificate of incorporation, articles of association, or equivalent document.
4. As evidence that applicant organization (including its predecessor corporation or association) is operating and has operated in the past as a non-profit corporation or association engaged solely in bona fide charitable, religious, missionary, educational, or philanthropic activities, please provide one (1) of the following:
 - (a) Copies of any documents which any state Department of Revenue or its equivalent has required the applicant organization to file pursuant to its status as a tax exempt entity for each of the previous five (5) years; or
 - (b) Copies of documentation from the Internal Revenue Service that the applicant organization has a current exemption from Federal income tax pursuant to 501(c)(3) of the Internal Revenue Code; or
 - (c) Copies of Internal Revenue Service Form 990 or any other annual submissions that the IRS may have required by virtue of the organization's tax exempt status for each of the last previous five (5) years; or

- (d) Other proof that the organization has been operating as a duly organized domestic or foreign nonstock corporation or association conducted without profit.
5. If applicant organization has not existed in its own right for at least five (5) years, please provide evidence in narrative or documentary form that the applicant organization is affiliated with a corporation or association (as described above) that has been in operation for such a period and that there is readily available to the applicant organization an adequate level of management expertise and provide information requested in Number 4, *supra*, for any affiliate.
 6. Provide a copy of the applicant organization's schedule of annuity rates computed on the basis for the annuity standard adopted by it for calculating its reserves, or a statement certifying that it adopts and will adhere to the annuity rates as published by the Committee on Gift Annuities of Dallas, Texas. If, at any time in the future, the applicant organization should alter this schedule of rates, it is required to inform the Commissioner in writing and submit a copy of the alternative schedule for approval.
 7. If the applicant organization adopts rates other than those published by the Committee on Gift Annuities, will the rates to be charged on new contracts be sufficient at all ages, to return a residuum to the organization upon death of the annuitants or survivor annuitants of at least 50% of the original gift or consideration? (Yes/No). _____. Please explain. _____

 8. Provide copies of each current form of agreement to be issued to annuitants in the State of Arkansas. [These forms should be completed in "John Doe" fashion and be assigned form numbers to differentiate the various types of agreements to be used.]
 9. Provide complete, audited financial reports of the applicant organization and/or its parent organization for the last five (5) fiscal years, prepared by an independent Certified Public Accountant in accordance with generally accepted accounting principles depicting the financial status of the applicant or qualified affiliate as of the most recently completed fiscal year.
 10. Indicate where in the audited financial statements it indicates that the following requirements have been met:
 - a) The admitted assets of the applicant are segregated as separate and distinct funds for the purpose of annuity benefits which may not, without exception, be applied towards the payment of other debts or obligations of the organization. _____
 - b) The amount of charitable gift annuity assets. _____
 - c) The amount of charitable gift annuity reserves liability. _____
 - d) If the previous items are not specifically disclosed in the audited financial statement, please provide the information in a document certified by the applicant's directors.
 11. Provide a certified copy of a resolution of the board of directors or board of trustees requiring segregation of assets for annuity benefits in accordance with Ark. Code Ann. § 23-63-201.

Note: See attached specimen of proposed resolution satisfactory to this Department.

12. Are such segregated assets held for the protection of ALL annuitants of the organization?
(Yes/No). _____. If no, please explain. _____

13. Indicate the investment standard being adopted by the applicant as described in Section 10 (C)(2). If applicant is organized under the laws of another state, provide state and state law under which its investments are governed.

14. In order to show compliance with Section 10 (C)(3) provide a copy of the custodian agreement which meets the standards of Ark. Code Ann. § 23-69-134(b)(4).

15. Indicate the reserve standard being adopted by the applicant as described in Section 10 (A)(1). If applicant is organized under the laws of another state, provide state and state law under which its reserves are governed.

Dated _____

(Name of organization)

S E A L

By _____
President

By _____
Treasurer

STATE OF _____)
) SS
COUNTY OF _____)

_____ and _____ being fully
severally sworn, each for himself, deposes and says that the said _____
is the President and the said _____ is the Treasurer of the
_____ that he signed the foregoing application by

order of the board of trustees/directors; that he has read the application and knows the contents thereof
and the statements contained therein and the such application and the data submitted to the Actuary as the
basis of his certificate of valuation are true and complete to the best of his knowledge, information and
belief.

President

Treasurer

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My Commission Expires:

PROPOSED
FORM OF RESOLUTION TO BE PASSED BY
CHARITABLE ANNUITY SOCIETIES RELATING TO
THE APPLICATION FOR A SPECIAL PERMIT AND
THE SEGREGATION OF ANNUITY RESERVES FUNDS

WHEREAS, Ark. Code Ann. 23-63-201 and Arkansas Rule 90, provides, among other things in respect to the exemption of Arkansas cities, towns, municipalities, or counties, or two (2) or more such entities acting pursuant to an Interlocal Cooperation Agreement authorized under Arkansas Code §§ 25-20-101 et. seq. (“municipality”) , and of Charitable Annuity Societies that are duly organized domestic or foreign nonstock corporations or associations conducted without profit (“corporation”), from certain provisions of the Insurance Law of the State of Arkansas that meeting the necessary prerequisites of the law, shall segregate from its assets as separate and distinct funds, independent from all other funds of such corporation or municipality and shall not apply said assets for the payment of the debts and obligations of the corporation or municipality or for any purpose other than the annuity benefits therein specified, and,

WHEREAS, this Section provides for the issuance of a special permit the Insurance Commissioner of the State of Arkansas for the purposes therein mentioned.

Now, therefore, be it RESOLVED that in order to meet the aforesaid requirements of the law and for the purpose of obtaining a special permit from the Insurance Commissioner of the State of Arkansas there shall be set aside and maintained assets of the corporation or municipality as a separate and distinct fund independent of all other funds of the corporation, which segregated funds shall not be applicable for the payment of the debts and obligations of the corporation or municipality or for any purpose other than the annuity benefits herein referred to and which fund shall be known as “.....” (use a name that will clearly designate it as the reserve account contemplated by this subsection).

Any assets heretofore segregated and held as separate funds on account of annuity benefits shall be merged with the aforesaid segregated assets to the extent required in order to comply with the provisions of Ark. Code Ann. § 23-63-201.

ANNUAL STATEMENT B
ANNUAL STATEMENT FOR CHARITABLE ANNUITY PERMIT HOLDERS

Filed with the Insurance Department of the State of Arkansas

By

Name of Permit Holder

Address of Permit Holder

Date: _____, (Year)_____

Name, Title, Address and telephone number of Individuals to whom Notices and Correspondence Concerning This Statement Should be Addressed:

ITEM 1. IDENTITY OF PERMIT HOLDER

Furnish the exact name of each duly organized domestic or foreign nonstock corporation or association conducted without profit or Arkansas city, town, municipality, or county, or two (2) or more such entities acting pursuant to an Interlocal Cooperation Agreement authorized under Arkansas Code §§ 25-20-101 et.seq. (collectively, "permit holder") the home office address and principal executive offices of each.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the corporation or municipality holding the permit.

ITEM 3. DIRECTORS

As to each new director of the corporation or municipality, list:

- (a) Name;
- (b) Home office address;
- (c) Principal executive office address;
- (d) The title of the person;

ITEM 4. CHANGES IN RATES/FORMS

If the rates or forms have changed during the year, furnish a copy of the new rates that are being used as well as a copy of any form that has been changed or added. Additionally, indicate if any form has been retired by the organization in relation to the charitable annuity program.

ITEM 5. AUDITED FINANCIAL STATEMENTS

(a) Financial statements and exhibits should be attached to this Statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) The financial statements shall include the annual financial statements as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the Commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the permit holder and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law.

ITEM 6. MANNER IN WHICH ASSETS ARE INVESTED

Indicate the investment standard being followed by the applicant as described in Rule 90, Section 10 (C)(2). If the permit holder is organized under the laws of another state, provide state and state law under which its investments are governed. If the permit holder is holding securities in accordance with Rule 90, Section 10 (C)(2)(b) file the following information:

(a) A description of the permit holder's investment philosophy for charitable gift annuities and how the investments of the permit holder are designed to meet future charitable gift annuity obligations;

(b) A report from the permit holder identifying the members of the investment committee charged with making investment decisions regarding charitable gift annuity assets, including a description of each committee member's investment expertise; and

(c) A certification of the permit holder's directors that attests that its investments and investment transactions match the organization's philosophy and meet the standards of the prudent investor rule stated in §§ 24-2-610 - 24-2-619.

ITEM 7. MANNER IN WHICH RESERVES ARE CALCULATED

Indicate the reserve standard being adopted by the applicant as described in Rule 90, Section 10 (A)(1). If the permit holder is organized under the laws of another state, provide state and state law under which its reserves are governed. An actuarial certification attesting to the accurateness of this calculation must be appended thereto.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Ark. Code Ann. §23-63-213 _____ the Permit Holder has caused this annual statement to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, (Year)_____.

Name of Permit Holder

(SEAL)

BY _____
(Name) (Title)

Attest:

(Signature of Officer) (Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached registration statement dated _____, (Year)_____, for and on behalf of (Name of Permit Holder) _____; that (s)he is the (Title of Officer)_____ of such permit holder and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____