

SERFF Tracking Number: MLLM-125951142 State: Arkansas  
Filing Company: Commonwealth Annuity and Life Insurance Company State Tracking Number: 41173  
Company Tracking Number: 0146ALM01-23  
TOI: A10 Annuities - Other Sub-TOI: A10.000 Annuities - Other  
Product Name: Form 4012-07 (REV 12-08) Tax Sheltered Annuity (TSA) Endorsement for Annuity Contracts  
Project Name/Number: Commonwealth Annuity and Life Insurance Company/0146ALM01-23

## Filing at a Glance

Company: Commonwealth Annuity and Life Insurance Company

Product Name: Form 4012-07 (REV 12-08) Tax SERFF Tr Num: MLLM-125951142 State: ArkansasLH

Sheltered Annuity (TSA) Endorsement for  
Annuity Contracts

TOI: A10 Annuities - Other

SERFF Status: Closed

State Tr Num: 41173

Sub-TOI: A10.000 Annuities - Other

Co Tr Num: 0146ALM01-23

State Status: Approved-Closed

Filing Type: Form

Co Status:

Reviewer(s): Linda Bird

Author: Jeff Kulesus

Disposition Date: 12/23/2008

Date Submitted: 12/19/2008

Disposition Status: Approved

Implementation Date Requested: On Approval

Implementation Date:

State Filing Description:

## General Information

Project Name: Commonwealth Annuity and Life Insurance Company

Status of Filing in Domicile: Pending

Project Number: 0146ALM01-23

Date Approved in Domicile:

Requested Filing Mode: Review & Approval

Domicile Status Comments: The form provided with this submission was submitted in the domiciliary state, Massachusetts, and is there pending review and approval.

Explanation for Combination/Other:

Market Type: Individual

Submission Type: New Submission

Group Market Size:

Overall Rate Impact:

Group Market Type:

Filing Status Changed: 12/23/2008

State Status Changed: 12/23/2008

Deemer Date:

Corresponding Filing Tracking Number:

Filing Description:

The form provided with this submission is submitted for your review and approval on behalf of Commonwealth Annuity and Life Insurance Company ("Commonwealth"). A letter from Commonwealth authorizing Milliman to conduct this filing is included with the submission.

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It is Commonwealth's intention that upon approval, the form 4012-07 (REV 12-08) Tax Sheltered Annuity (TSA) Endorsement for Annuity Contracts may be attached to all previously approved Commonwealth fixed and variable annuity contracts, as well as to those contracts approved by the Department in the future, whenever they are sold as a tax sheltered annuity within the meaning of the Internal Revenue Code Section 403(b) and 401(a)(9). Commonwealth also intends to issue the Endorsement to existing TSA contract owners.

Issue ages for the Endorsement will be the same as those for the contract to which it is attached. Because form 4012-07 (REV 12-08) is written to meet the requirements of Federal law, we request that Flesch readability score requirements for the form be waived.

The form is submitted in final printed format except for slight font and formatting variations that may occur due to Commonwealth production printers. Commonwealth takes care to assure that printer-based variations are minimized; however, should changes occur, such changes will not alter the content or meaning of any approved forms.

The form sent with this submission is new and has not been previously filed with or approved by the Department for Commonwealth Annuity. Please note that portions of the form are bracketed as variable and may change as described in the Statement of Variability.

Your prompt review and approval of this Endorsement is greatly appreciated.

## Company and Contact

### Filing Contact Information

(This filing was made by a third party - MUSA01)

Jeff Kulesus, Compliance Consultant Jeff.Kulesus@Milliman.com  
2 Conway Park, Ste. 180 (312) 499-5635 [Phone]  
Lake Forest, IL 60045 (847) 604-8671[FAX]

### Filing Company Information

Commonwealth Annuity and Life Insurance Company CoCode: 84824 State of Domicile: Massachusetts

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2132 Turnpike Road, Suite 210 Group Code: 3891 Company Type: Life  
Southborough, MA 01772 Group Name: State ID Number:  
(508) 460-2400 ext. [Phone] FEIN Number: 04-6145677  
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## Filing Fees

Fee Required? Yes  
 Fee Amount: \$20.00  
 Retaliatory? No  
 Fee Explanation: 1 form x #20.00@ = \$20.00  
 Per Company: No

COMPANY	AMOUNT	DATE PROCESSED	TRANSACTION #
Commonwealth Annuity and Life Insurance Company	\$20.00	12/19/2008	24639430

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## Correspondence Summary

### Dispositions

Status	Created By	Created On	Date Submitted
Approved	Linda Bird	12/23/2008	12/23/2008

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## Disposition

Disposition Date: 12/23/2008

Implementation Date:

Status: Approved

Comment:

Rate data does NOT apply to filing.

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<b>Item Type</b>	<b>Item Name</b>	<b>Item Status</b>	<b>Public Access</b>
<b>Supporting Document</b>	Certification/Notice		Yes
<b>Supporting Document</b>	Application		No
<b>Supporting Document</b>	Life & Annuity - Acturial Memo		No
<b>Supporting Document</b>	Authorization Letter		Yes
<b>Supporting Document</b>	Statement of Variability		Yes
<b>Form</b>	Tax Sheltered Annuity (TSA) Endorsement for Annuity Contracts		Yes

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## Form Schedule

Lead Form Number: 4012-07 (REV 12-08)

Review Status	Form Number	Form Type	Form Name	Action	Action Specific Data	Readability	Attachment
	4012-07 (REV 12-08)	Policy/Contract/Fratern	Tax Sheltered Annuity (TSA) Endorsement for Annuity Contracts Certificate: Amendmen t, Insert Page, Endorseme nt or Rider	Initial			4012-07 (REV 12-08) Tax Sheltered Annuity (TSA) Endorsement for Annuity Contracts.pdf



**Commonwealth Annuity and Life Insurance Company**

Administrative Office:  
[PO Box 758550]  
[Topeka, KS 66675]

**TAX SHELTERED ANNUITY (TSA) ENDORSEMENT  
FOR ANNUITY CONTRACTS**

The contract or certificate under a group contract (collectively, the "Contract") to which this Endorsement is attached is amended as specified below to satisfy the requirements of section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"), and the Income Tax Regulations thereunder. All the provisions of the Contract and this Endorsement shall be interpreted in accordance with Code section 403(b) and the Income Tax Regulations thereunder and, if applicable, the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Where the provisions of this Endorsement are inconsistent with the provisions of the Contract, including the provisions of any other endorsements or riders issued with the Contract, the provisions of this Endorsement will control.

**I. The Plan, Employer, and Employee**

As used in this Endorsement, the term "Plan" refers to the plan under Code section 403(b) that is maintained by the Employer and pursuant to which the Contract is issued or, if applicable, the agreement between the Employer and Protective Life Insurance Company (the "Company") to provide each other with information described in section 1.403(b)-10(b)(2)(C) of the Income Tax Regulations. The term "Employer" refers to the employer described in Code section 403(b)(1)(A) and the Income Tax Regulations thereunder that maintains the Plan pursuant to which the Contract is issued. The term "Employee" refers to an employee or former employee of the Employer for whose benefit the Employer maintains the Plan and the Contract is issued under the Plan.

**II. Owner and Annuitant**

Except as otherwise provided under applicable federal tax law, (1) the Employee must be the Owner and the Annuitant if the Contract is an annuity contract, (2) the Employee must be the Owner and the Insured if the Contract is a life insurance contract, (3) the Annuitant or Insured, whichever is applicable, and the Owner may not be changed, and (4) a joint Owner may not be named.

**III. Contributions**

**A. In General**

Contributions shall not exceed the limits of Code section 415. The Company will not accept any contributions in excess of this limit and does not intend to account separately for any such excess contributions or amounts attributable to any such excess contributions.

A contribution may not include amounts attributable to designated Roth contributions under Code section 402A or after-tax employee contributions.

## **B. Single Premium Contract**

If only a single premium is permitted under the Contract, the single premium permitted may not include any amounts other than:

1. an exchange or plan-to-plan transfer described in section VI of this Endorsement, or
2. a rollover permitted under Code sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3), and 457(e)(16).

## **C. Flexible Premium Contract**

If flexible premiums are permitted under the Contract, a premium to the Contract must be made:

1. as a contribution by the Employer on behalf of the Employee, including contributions made pursuant to a salary reduction agreement,
2. as an exchange or plan-to-plan transfer described in section VI of this Endorsement, or
3. as a rollover permitted under Code sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3), and 457(e)(16).

Except as otherwise permitted by Code section 414(u), Code section 414(v), or other provisions of the federal tax law, contributions made pursuant to a salary reduction agreement shall not exceed the limits set forth in Code section 402(g). If contributions exceed this limit, the Company may distribute the amount of the excess, together with any income allocable thereto, to the Employee as permitted by applicable federal tax law.

## **D. Minimum Premiums**

If a minimum premium amount is required under the Contract, the Company will reduce this minimum premium amount if necessary to comply with Code section 403(b)(12).

## **E. Life Insurance Contract**

If the Contract is a life insurance contract, a premium may not exceed that permitted under applicable federal tax law to provide death benefits satisfying the incidental benefit requirement under section 1.401-1(b)(1)(i) of the Income Tax Regulations, to the extent applicable under section 403(b) and the Income Tax Regulations thereunder.

## **IV. Nontransferable and Nonforfeitable**

The Contract is established for the benefit of the Employee and his or her beneficiaries. The interest of the Employee in the Contract is non-transferable and, except as provided by applicable law, is non-forfeitable. In particular, except as otherwise provided under applicable law, the Contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose, to any person other than the Company. Special rules may apply in the case of a transfer under the terms of a qualified domestic relations order, as defined in Code section 414(p) (a "QDRO").

## **V. Distribution Restrictions**

### **A. In General**

Except as otherwise provided under federal tax law, a distribution from the Contract shall be made only in accordance with the requirements of Code section 403(b), the Income Tax Regulations, the Plan, and, if applicable, section 205 of ERISA. Amounts may be distributed pursuant to a QDRO to the extent permitted by applicable federal tax law.

## **B. Elective Deferrals**

As required by Code section 403(b)(11), Code section 403(b)(7), and the applicable Income Tax Regulations thereunder, a distribution permitted under the Plan, if applicable, of Elective Deferrals may not be made from the Contract earlier than the earliest of the date on which the Employee (1) has a severance from employment, (2) dies, (3) has a hardship, (4) becomes disabled (within the meaning of Code section 72(m)(7)), or (5) attains age 59½. A hardship distribution is limited to the aggregate dollar amount of the Employee's Elective Deferrals under the Contract (and may not include any income thereon), reduced by the aggregate dollar amount of the distributions previously made to the Employee from the Contract. As used in this Endorsement, the term "Elective Deferrals" means contributions to the Contract made after December 31, 1988, pursuant to a salary reduction agreement, earnings on such contributions, and earnings on any amounts held as of December 31, 1988. Elective Deferrals also include amounts attributable to contributions made to the Contract in a non-taxable transfer, or in an exchange or plan-to-plan transfer described in section VI of this Endorsement, that are attributable to contributions made pursuant to a salary reduction agreement and are subject to the distribution restrictions under Code section 403(b)(7) or Code section 403(b)(11).

## **C. Employer Annuity Contributions**

If the Contract is issued on or after January 1, 2009, a distribution of Employer Annuity Contributions may be made from the Contract no earlier than upon the earlier of the Employee's severance from employment or upon the prior occurrence of some event, such as after a fixed number of years, the attainment of a stated age, or disability, as provided under the Plan. As used in this Endorsement, the term "Employer Annuity Contributions" means amounts attributable to contributions made to an annuity contract under Code section 403(b)(1) that are not made pursuant to a salary reduction agreement. Employer Annuity Contributions do not include after-tax employee contributions or earnings thereon. Employer Annuity Contributions include amounts attributable to contributions made to the Contract in an exchange or plan-to-plan transfer described in section VI of this Endorsement that are subject to the distribution restrictions under section 1.403(b)-6(b) of the Income Tax Regulations.

## **D. Employer Custodial Account Contributions**

A distribution permitted under the Plan, if applicable, of Employer Custodial Account Contributions may not be paid from the Contract before the Employee (1) has a severance from employment, (2) dies, (3) becomes disabled (within the meaning of Code section 72(m)(7)), or (4) attains age 59½. As used in this Endorsement, the term "Employer Custodial Account Contributions" means amounts attributable to contributions made to the Contract in a non-taxable transfer, or in an exchange or plan-to-plan transfer described in section VI of this Endorsement, that (1) are not made pursuant to a salary reduction agreement, (2) are not Employer Annuity Contributions, and (3) are subject to the distribution restrictions under Code section 403(b)(7).

## **E. Separate Accounting**

If the Contract includes both Elective Deferrals and other contributions, and the Elective Deferrals are not maintained in a separate account, then in accordance with section 1.403(b)-6(d)(3) of the Income Tax Regulations, distributions may not be made earlier than the later of:

1. any date permitted under subsection B of this section V of the Endorsement, and
2. any date permitted under subsections C or D of this section V of the Endorsement (whichever applies to the contributions that are not Elective Deferrals).

Unless required under the Plan, the Company is not obligated to maintain a separate account for Elective Deferrals.

## **F. Exchanges and Transfers**

Amounts exchanged or transferred to the Contract pursuant to section VI of this Endorsement, and income attributable to such amounts, are subject to distribution restrictions that are not less stringent than those imposed under the contract being exchanged or under the transferor plan, whichever is applicable, in accordance with section 1.403(b)-10(b)(2) of the Income Tax Regulations.

## **G. Exceptions**

1. Notwithstanding any other provision in this section V of the Endorsement, distributions are permitted to be made from the Contract to the extent (a) described in sections III and VI of this Endorsement, (b) required by a QDRO, (c) described in Code section 72(t)(2)(G), (d) permitted by Code section 414(w)(2), or (e) otherwise allowed by applicable federal tax law.
2. If the Employer informs the Company that the Plan has been terminated in accordance with section 1.403(b)-10(a) of the Income Tax Regulations, the Company shall follow the instructions of the Employer with regard to how the Contract or the accumulated benefits thereunder are to be distributed, provided that such instructions are in accordance with the requirements of Code section 403(b) and the Income Tax Regulations.
3. To the extent that the Company separately accounts for contributions to the Contract that are eligible rollover distributions as described in sections 1.403(b)-6(i) and 1.403(b)-10(d) of the Income Tax Regulations, such contributions (and any earnings thereon) are not subject to the distribution restrictions described in this section V of this Endorsement. The Company is not obligated to separately account for any such amounts.

## **VI. Exchanges and Plan-to-Plan Transfers**

Subject to the terms of the Plan, if applicable, exchanges within the Plan and plan-to-plan transfers involving the Contract will be allowed to the extent permitted under federal tax law.

Such exchanges and plan-to-plan transfers can affect whether a Contract that is a life insurance contract satisfies the incidental benefit requirement under section 1.401-1(b)(1)(i) of the Income Tax Regulations, to the extent applicable under Code section 403(b) and the Income Tax Regulations thereunder.

## **VII. Loans and Hardship Distributions**

While the Contract is in force, the Owner may borrow from the Contract using the Contract as the sole security for the loan. A loan under the Contract is subject to the requirements and limitations imposed by the Plan, Code section 72(p), Code section 403(b), the loan agreement, and the Company.

A distribution in the case of hardship that is permitted under section V of this Endorsement may be made under the Contract.

However, except as otherwise provided under section 1.403(b)-10(b)(2) of the Income Tax Regulations with respect to certain Contracts received in an exchange that occurred on or before September 24, 2007, and under section 8 of Revenue Procedure 2007-71 with respect to certain Contracts issued before January 1, 2009, a loan and a distribution in the case of hardship may be made under the Contract only if permitted under the Plan.

## **VIII. Required Minimum Distributions and Incidental Benefits**

### **A. In general**

Notwithstanding any provision in the Contract to the contrary, the distribution of the entire interest in the Contract shall be made in accordance with the requirements of Code sections 403(b)(10) and 401(a)(9), the Income Tax Regulations thereunder, and, if applicable, section 205 of ERISA. Distributions from and benefits under the Contract also must satisfy the requirements relating to incidental benefits under section

1.401-1(b)(1)(ii) of the Income Tax Regulations. All such requirements are incorporated herein by reference. Except as otherwise provided under applicable federal tax law, prior to the date the Contract is annuitized, the entire interest of the Employee or beneficiary under the Contract is the dollar amount credited to the Employee or beneficiary under the Contract plus the actuarial present value of any additional benefit (such as survivor benefits in excess of the dollar amount credited to the Employee or beneficiary) that will be provided under the Contract, in accordance with Q&A-12 of section 1.401(a)(9)-6 of the Income Tax Regulations.

To the extent permitted under the Plan and the Code, the minimum distribution required under Code sections 403(b)(10) and 401(a)(9) with respect to the Contract may be taken from any one or more of the Employee's Code section 403(b) contracts under the Plan.

To the extent provided in Income Tax Regulations, a Contract that is part of a governmental plan (as defined in Code section 414(d)) shall, for all years to which Code section 401(a)(9) applies to the Contract, be treated as having complied with Code section 401(a)(9) if the Contract complies with a reasonable good faith interpretation of Code section 401(a)(9).

#### **B. Required Beginning Date**

The term "required beginning date" as used in this Endorsement means April 1 of the calendar year following the later of (1) the calendar year in which the Employee attains age 70½, (2) the calendar year in which the Employee retires, or (3) such later date provided by law. However, unless the Employee's interest in the Contract is on account of the Employee's participation in a governmental plan (as defined in Code section 414(d)) or church plan (as defined in Code section 401(a)(9)(C)), if the Employee is a 5-percent owner (as defined in Code section 416) of the Employer with respect to the plan year ending in the calendar year in which the Employee attains age 70½, the required beginning date is April 1 of the calendar year following the calendar year in which the Employee attains age 70½. In addition, if distributions commence to the Employee on a date before the Employee's required beginning date over a period permitted under Code section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of Q&A-1 of 1.401(a)(9)-6 of the Income Tax Regulations, the annuity starting date will be treated as the required beginning date for purposes of applying the rules of sections 1.401(a)(9)-2 and 1.401(a)(9)-6 of the Income Tax Regulations.

#### **C. Distributions During Employee's Life**

Unless otherwise permitted under applicable federal tax law, the entire interest shall be distributed, or commence to be distributed, no later than the required beginning date over (a) the life of the Employee, or the lives of the Employee and his or her designated beneficiary (within the meaning of the Code section 401(a)(9)), or (b) a period not extending beyond the life expectancy of the Employee or the joint life and last survivor expectancy of the Employee and his or her designated beneficiary, as required by law. Payments must be made in periodic payments at intervals of no longer than one year and must be nonincreasing or they may increase only as provided in Q&As-1, -4, and -14 of section 1.401(a)(9)-6 of the Income Tax Regulations. Also, to the extent permitted under the Contract, payments may be changed in accordance with Q&A-13 of section 1.401(a)(9)-6 of the Income Tax Regulations. In addition, any distribution must satisfy the incidental benefit requirements specified in Q&A-2 of section 1.401(a)(9)-6 of the Income Tax Regulations.

The amount to be distributed on or before the required beginning date, and by December 31 of each year, will be made in accordance with the requirements of Code section 401(a)(9) and the regulations thereunder.

#### **D. Distributions After Employee's Death**

Unless otherwise permitted under applicable federal tax law, if the Employee dies on or after required distributions commence, the entire remaining interest, if any, will be distributed at least as rapidly as under the method of distribution being used as of the date of the Employee's death.

Unless otherwise permitted under applicable federal tax law, if the Employee dies before required distributions commence, the entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Employee's death, except that:

1. if the interest is payable to an individual who is the Employee's designated beneficiary, the designated beneficiary may elect to receive the entire interest over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the Employee died; or
2. if the sole designated beneficiary is the Employee's surviving spouse (within the meaning of federal law), the surviving spouse may elect to receive the entire interest over the life of the surviving spouse or over a period not extending beyond the life expectancy of the surviving spouse, commencing on or before the later of:
  - a. December 31 of the calendar year immediately following the calendar year in which the Employee died, and
  - b. December 31 of the calendar year in which the Employee would have attained age 70½.

If the surviving spouse dies before distributions begin to him or her, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's designated beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed by the end of the calendar year containing the fifth anniversary of the spouse's death.

An irrevocable election of the method of distribution by a designated beneficiary who is the surviving spouse must be made no later than the earlier of December 31 of the calendar year containing the fifth anniversary of the Employee's death or the date distributions are required to begin pursuant to this section VIII.D.2 of the Endorsement. If no election is made, the entire interest will be distributed in accordance with the method of distribution in this section VIII.D.2 of the Endorsement.

An irrevocable election of the method of distribution by a designated beneficiary who is not the surviving spouse must be made no later than December 31 of the calendar year immediately following the calendar year in which the Employee died. If no such election is made, the entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Employee's death.

For purposes of this section of the Endorsement regarding distributions after the Employee's death, required distributions are considered to commence on the Employee's required beginning date or, if applicable, on the date distributions are required to begin to the Employee's surviving spouse. However, if distributions start prior to the applicable date in the preceding sentence, on an irrevocable basis (except for acceleration) under an annuity contract meeting the requirements of 1.401(a)(9)-6 of the Income Tax Regulations, then required distributions are considered to commence on the annuity starting date.

Unless otherwise provided by applicable federal tax law, life expectancy is determined using the Single Life Table in Q&A-1 of section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to the Employee's surviving spouse as the sole designated beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in

the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year following the calendar year of the Employee's death (or in the case of a surviving spouse who is the Employee's sole designated beneficiary and who dies before required distribution commence to him or her, the number in the Single Life Table corresponding to the spouse's designated beneficiary's age in the year following the calendar year of the spouse's death) reduced by 1 for each subsequent year. If benefits under the Contract are payable in accordance with an annuity option provided under the Contract, life expectancy shall not be recalculated.

#### **E. Annuity Options**

All annuity payments under the Contract must meet the requirements of Code section 403(b)(10), Code section 401(a)(9), section 205 of ERISA, if applicable, and the applicable regulations. The provisions of this Endorsement reflecting these requirements override any annuity payment option inconsistent with such requirements. If guaranteed payments are to be made under the Contract, the period over which any guaranteed payments are to be made must not exceed the period permitted under section 1.401(a)(9)-6 of the Income Tax Regulations (except as otherwise permitted by applicable federal tax law).

#### **IX. Direct Rollovers**

Except as otherwise provided under applicable federal tax law, a distributee may elect, at the time and in the manner prescribed by the Company, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code sections 403(b)(10) and 401(a)(9); (iii) any hardship distribution; (iv) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); (v) any other distribution(s) that is reasonably expected to total less than \$200 during a year; and (vi) any other amounts designated in published federal income tax guidance.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code section 408(a) or (b), respectively, or to a qualified defined contribution plan described in Code section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of the distribution which is not so includible.

An eligible retirement plan is an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the Contract, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), or a qualified plan described in Code section 401(a), that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a QDRO.

A distributee includes the Employee. In addition, the Employee's surviving spouse and the Employee's spouse or former spouse who is the alternative payee under a QDRO, are distributees with regard to the interest of the spouse or former spouse.

A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## **X. Coordination with the Plan**

Except to the extent that the Contract is not subject to the written plan requirement under section 1.403(b)-3(b)(3) of the Income Tax Regulations, the Contract is subject to the terms of the Plan, provided that the terms of the Plan do not expand the terms of the Contract and do not impose any responsibilities or duties on the Company greater than those set forth in the Contract. For example, any terms of the Contract permitting loans and distributions in the case of hardship do not apply if the Plan does not permit such loans or hardship distributions. In the event of a conflict between the terms of the Contract and any other terms of the Plan, such other terms of the Plan shall govern if necessary to ensure compliance with Code section 403(b).

Federal law may require the Employer to share information with the Company that is necessary for the Company to administer the Contract in accordance with the terms of the Plan and the Code. In such case, the Company shall rely upon such information in administering the Contract in accordance with the terms of the Plan and the Code. If the Company does not receive such information from the Employer in the form and manner the Company deems acceptable, the Company will administer the Contract in the manner it deems appropriate. In some cases, this could mean that the Company has no responsibility to make any distribution (including a loan) from the Contract before the Company receives the information it requires from the Employer.

Federal tax law also may require the Company to share information regarding the Contract with the Employer in order to ensure compliance with the terms of the Plan and the Code. The Company will share such information as required by federal tax law and any agreement between the Company and the Employer.

The Employer may identify a delegate to provide or receive the information described in this section X of the Endorsement.

## **XI. Incidental Life Insurance**

Life insurance protection provided under the Contract must be incidental within the meaning of Code section 403(b)(1) and section 1.401-1(b)(1)(i) of the Income Tax Regulations. Except as otherwise provided under applicable federal tax law, no portion of the value of the Contract may be used to continue life insurance protection beyond the Employee's retirement. On or before the Owner's retirement, the Owner, at his or her election, must:

1. surrender the Contract,
2. apply the Cash Surrender Value, less any outstanding policy loans and loan interest, to an annuity providing payments that are made in accordance with the requirements of Code sections 403(b)(10) and 401(a)(9), and the Income Tax Regulations thereunder, or
3. continue the Contract by requesting the deletion of this Endorsement and including the Cash Surrender Value in gross income.

If no election is made, an election under option 3 of this section XI of the Endorsement will be deemed to be made.

## **XII. Miscellaneous Provisions**

### **A. Effective Date**

If the Contract was issued on or after January 1, 2009, the effective date of this Endorsement is the effective date of the Contract. If the Contract was issued prior to January 1, 2009, the Endorsement is effective January 1, 2009, and replaces the provisions of any other endorsement or rider to the Contract that are designed to modify the Contract in accordance with the requirements of Code section 403(b).

### **B. Unisex Rates**

The method of calculating contributions and benefits under the Contract are to be based on unisex rates, and any references to sex or gender (with regard to rates and benefits) in the Contract are deleted.

### **C. Automatic Rollovers**

If the Plan provides for a mandatory distribution described in Code section 401(a)(31)(B)(ii), and such a mandatory distribution greater than \$1,000 is made on or after March 28, 2005, if the Employee does not properly elect to have such distribution paid directly to an eligible retirement plan specified by the Employee in a direct rollover or to receive the distribution directly, then the Plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator. For purposes of determining whether a mandatory distribution is greater than \$1000, the portion of the participant's distribution attributable to any rollover contribution is included.

In addition, eligible rollover distributions from a designated Roth account are taken into account in determining whether the total amount of the account balances exceeds \$1,000 for purposes of the mandatory distributions from the Contract.

### **D. Treatment as an Annuity Contract under Code Section 403(c)**

If the Contract is not treated for federal tax purposes as an annuity contract under Code section 403(b), the Contract will be treated as an annuity contract described in Code section 403(c), the Contract and all endorsements and riders attached to the Contract will be interpreted in accordance with Code section 403(c), the provisions of this Endorsement other than sections XII.A and this section XII.D. shall not apply, and the entire interest in the Contract will be distributed in accordance with the requirements of Code section 72(s).

### **E. Death Benefits under Qualified Active Military Service**

To the extent required under Code sections 403(b)(14) and 401(a)(37), in the case of an Employee who dies while performing qualified military services (as defined in Code section 414(u)), the survivors of the Employee are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

### **F. ERISA**

If this Contract is being maintained pursuant to a Plan that is subject to the requirements of Title I of ERISA, the Employer is solely responsible for assuring that the Plan complies at all times with such requirements, including assuring that all distributions, consents, and elections under the Contract comply with the requirements of section 205 of ERISA. The Company shall be under no duty to determine whether a plan constitutes an employee benefit plan that is subject to Title I of ERISA and shall be fully entitled to rely on the Employer's or Plan Administrator's representation of the Plan's ERISA status.

### **G. Amendment of this Endorsement**

The Company reserves the right, and the Owner agrees the Company shall have such right, to make any amendments to this Endorsement from time to time as may be necessary to assure continued qualification of this Contract with the requirements of Code section 403(b), the Income Tax Regulations thereunder, and, if applicable, ERISA. We will obtain all necessary approvals including, where required, that of the Owner, and will send you a copy of the Endorsement that modifies your Contract. We will not be responsible for any adverse tax consequences resulting from the rejection of such amendment.

### **H. Section References**

References to a section of the Code or Income Tax Regulations include any amended or successor section.

IN WITNESS WHEREOF, Commonwealth Annuity and Life Insurance Company has caused this Endorsement to be signed by its President and Secretary.



Michael A. Reardon  
President



Scott D. Silverman  
Corporate Secretary

SERFF Tracking Number: MLLM-125951142 State: Arkansas  
Filing Company: Commonwealth Annuity and Life Insurance Company State Tracking Number: 41173  
Company Tracking Number: 0146ALM01-23  
TOI: A10 Annuities - Other Sub-TOI: A10.000 Annuities - Other  
Product Name: Form 4012-07 (REV 12-08) Tax Sheltered Annuity (TSA) Endorsement for Annuity Contracts  
Project Name/Number: Commonwealth Annuity and Life Insurance Company/0146ALM01-23

## Rate Information

Rate data does NOT apply to filing.

SERFF Tracking Number: MLLM-125951142 State: Arkansas  
Filing Company: Commonwealth Annuity and Life Insurance State Tracking Number: 41173  
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## Supporting Document Schedules

### Review Status:

**Satisfied -Name:** Certification/Notice 12/16/2008

**Comments:**

Attached is the Certification. Please note that the qualified plan endorsement provided with this submission consists of language mandated by Federal law; therefore, a Flesch Certification has not been provided with this submission.

**Attachment:**

AR Officer Certification.pdf

### Review Status:

**Satisfied -Name:** Authorization Letter 12/17/2008

**Comments:**

Authorization Letter

**Attachment:**

Authorization Letter.pdf

### Review Status:

**Satisfied -Name:** Statement of Variability 12/17/2008

**Comments:**

Statement of Variability

**Attachment:**

Statement of Variability.pdf

**STATE OF ARKANSAS  
CERTIFICATION**

On behalf of Commonwealth Annuity and Life Insurance Company, I certify that the forms associated with this submission will be compliant with Arkansas Code Annotated 23-79-138 in that each 4012-07 (Rev 12-08) endorsement shall be issued with:

- (1) The complete address and telephone number, 800 number if possible, of the policyholder's service office of the company issuing the policy;
- (2) The name, address, and telephone number of the agent soliciting the policy, if applicable; and
- (3) The address and telephone number, 800 number if available, of the State Insurance Department.

Furthermore:

- (4) A copy of the Life and Health Guaranty Association Notice will accompany each policy issue in compliance with Regulation 49, and
- (5) The form 4012-07 (rev 12-08) has been modified to be in compliance with Arkansas Code Annotated 23-66-502(a).



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Scott D. Silverman  
Vice President and General Counsel

Date: December 19, 2008

# COMMONWEALTH

Commonwealth Annuity and  
Life Insurance Company  
A Goldman Sachs Company

132 Turnpike Road, Suite 210  
Southborough, MA 01772  
Tel: (508) 460-2400  
Fax: (508) 460-2401  
[www.commonwealthannuity.com](http://www.commonwealthannuity.com)

October 22, 2008

Jeff Kulesus, FLMI  
Compliance Consultant  
Milliman, Inc.  
Two Conway Park  
150 Field Drive, Suite 180  
Lake Forest, Illinois 60045

**RE: State Insurance Filing**

Dear Mr. Kulesus:

This letter will serve as authorization from Commonwealth Annuity and Life Insurance Company for employees of Milliman, Inc. to file policy forms and other related material, and respond to inquiries on our behalf with all state insurance departments and jurisdictions where Commonwealth Annuity and Life Insurance Company is authorized to do business.

Sincerely,



Michael A. Reardon  
Commonwealth Annuity and Life Insurance Company  
Director, President, and Chief Executive Officer  
Tel: 508-460-2423  
Fax: 212.493.0324  
[mreardon@cwannuity.com](mailto:mreardon@cwannuity.com)

# COMMONWEALTH ANNUITY AND LIFE INSURANCE COMPANY

## STATEMENT OF VARIABILITY

### 4012-07 (REV 12-08), Tax Sheltered Annuity (TSA) Endorsement for Annuity Contracts

#### Front Page

- Company logo – Will insert Company logo.
- Address – Will insert the Company administrative office address and telephone number.

#### Last Page

- Signatures, Titles – Will insert signature and appropriate title of appropriate Company officer or officers.