

December 1, 1961

SUBJECT: INSURANCE

TO ALL AUTHORIZED LIFE INSURERS:

Gentlemen:

Re: Regulation No. 33 - Rules and Conditions for Use of Investment Year Method of Distributing Net Investment Income

The Department has received a number of questions involving the procedures to be followed in connection with subdivision 2 of Section E of Part II of Regulation No. 33.

Section E of Regulation No. 33 sets forth in subdivision 1 certain rules designed to assure that a life insurer's use of an investment year method is in accordance with Insurance Law requirements that holders of insurance policies and annuity contracts be treated equitably. Subdivision 2 of Section E establishes a procedure for obtaining approval of deviations from any of the rules set forth in subdivision 1. Subdivision 3 requires certification by an insurer that its plan for use of an investment year method conforms either with the rules contained in subdivision 1 or with a deviation therefrom approved for use by said applicant in accordance with subdivision 2.

If a life insurer desires to use an investment year method which does not conform with the rules set forth in subdivision 1, it should submit (1) a full description of its plan for use of such method in distributing net investment income to and within annual statement lines of business, as defined in Section B of Part II of the regulation, (2) identification of each rule set forth in subdivision 1 as to which deviation is proposed, (3) the manner in which such plan deviates from said rules, and (4) a showing that the proposed deviation is necessary to do equity or to obviate impracticality or unfeasibility. For example:

1. An insurer proposes (a) to distribute net investment income to annual statement lines of business in accordance with paragraph (b) of subdivision 3 of Section D of Part II of the Regulation, and (b) use an investment year method of distribution within one such line of business. This would constitute a deviation from rules (b) and (c) of subdivision 1 of Section E. Another insurer proposes to use an investment year method for distributing net investment income to annual statement lines of business but only within one such line of business. This would constitute a deviation from rule (d) of subdivision 1 of Section E. In either case, the insurer should show in support of its request for approval of deviation (a) that none of the lines of business, as defined in Section B of Part II, within its annual statement lines of business other than the one within which it proposes to use an investment year method possesses characteristics so similar to the lines of business to which an investment year method will apply, as to require like treatment if its plan is to be equitable, or (b) that like treatment would be impracticable or unfeasible.

2. In distributing net investment income to or within an annual statement line of business, an insurer proposes to use an investment year method which does not treat as a single period all years of investment prior to the year of investment as to which such method first becomes effective. This would constitute a deviation from rule (f) of subdivision 1 of Section E. In requesting approval of such a deviation, the insurer should show:

(a) with respect to each investment year, that it can accurately (i) identify investments made, funds made available for reinvestment from any prior investment year, and changes in "fixed or frozen" assets and in uninvested funds, and (ii) compute investment yield rates;

(b) with respect to all lines of business to which the proposed method is to be applied, that it can identify accurately each of the components of the fund accounts (or other experience records) for each such line of business from inception; and

(c) with respect to all lines of business, that use of the proposed method would not (i) unfairly discriminate against, or otherwise treat inequitably, any policyholder or contractholder within each such line of business, and (ii) makes appropriate adjustment for the operation of guaranteed interest rates in all prior investment years.

A Certification of a plan incorporating a deviation should not be made until such deviation has been approved in accordance with subdivision 2 of Section E of Part II.

Very truly yours,

(Signed) THOMAS THACHER

Superintendent of Insurance