

February 14, 1977

SUBJECT: INSURANCE

Circular Letter No. 3

TO: ALL AUTHORIZED INSURERS AND ARTICLE IX-C CORPORATIONS

This letter will constitute notice of the requirements of this Department with regard to group dividend and retrospective rate credits or refunds.

A group dividend is the term applied to the payment of a refund of part of a redundant premium under a participating group insurance policy; a group retrospective rate credit or refund is the term applicable to a similar payment under a non-participating group insurance policy. The amounts returned or credited in both cases are based upon the actual experience of a particular group policyholder or of a class of group policyholders, or on a combination of such experience.

Sections 204(2) and 221(9) of the New York Insurance Law provide that any company subject to the provisions thereof shall compute retrospective rate credits or refunds on a basis which is equitable to all group policyholders. Section 253(6) permits the inclusion in any contract issued by an Article IX-C corporation of a provision for a retrospective rate credit or refund. Under Section 255(2) the Superintendent may refuse to approve rates for Article IX-C corporations if he finds that such rates are excessive, inadequate or unfairly discriminatory. Compliance with the law requires that such credits or refunds, like dividends, must be based upon an objective formula which is set forth explicitly and in writing, and which is uniformly applied.

On October 16, 1973, the Appellate Division of the New York State Supreme Court rendered a decision confirming a determination by the Superintendent of Insurance that a group retrospective rate credit formula must be approved by a board of directors in the same manner that a group dividend formula is required to be approved. The thrust of the determination was that a dividend and a retrospective rate credit or refund are for all practical purposes indistinguishable and both, therefore, are subject to similar scrutiny by the Department. (*INA Life Insurance Company of New York v. Schenck*, 42 App. Div. 2d 1050, 348 N.Y.S. 2d 742 (First Dep't 1973))

Compliance with the law and the decision of the court requires, therefore, that a retrospective rate credit or refund must be based upon an objective formula which is set forth explicitly and in writing, and which is approved by the board of directors or similar governing body of your organization.

Please acknowledge receipt of this letter to Alvin H. Alpert, Chief of the Life Insurance and Companies Bureau, at the above address. Such acknowledgment should state if your organization currently complies with the foregoing requirements. If not, please state when such compliance will be effected.

Very truly yours,

[SIGNATURE]

THOMAS A. HARNETT

Superintendent of Insurance