

October 16, 1979

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 16 (1979)

TO: ALL DOMESTIC LIFE INSURANCE COMPANIES

GUIDELINES FOR THE APPROVAL OF RETIREMENT PLANS OF DOMESTIC LIFE INSURANCE COMPANIES

This Circular Letter supersedes the Department's Circular Letter No. 2 (1972) dated April 17, 1972.

Under Section 214 of the New York Insurance Law, retirement plans of domestic life insurance companies must be approved by the Insurance Department. The purpose of these guidelines is to inform all domestic life insurance companies of this Department's current objectives and requirements in approving retirement plans under this statute. Since the previous Circular Letter, several developments have taken place, including federal pension legislation and the application of the principles and objectives of the guidelines to situations which were not anticipated or not specifically referred to previously. It is intended that these updated guidelines will assist companies in submitting new or revised retirement plans and will assist the Department in expediting the review of each submission.

1. Purpose

The purposes of requiring Department approval are:

- (a) To assure that the obligation to provide for benefits will not impose an undue burden upon the insurer's financial condition, and to curb excessive expenses which tend to increase the insurer's cost.
- (b) To assure with reasonable certainty that promised benefits will in fact be paid.
- (c) To provide that the contributions or benefits under a plan do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consists of supervising the work of other employees, or highly-compensated employees.

Funding methods must satisfy the following requirements:

- (a) Benefits must be provided through a contract issued by an insurance company licensed to issue such a contract in New York State. A domestic life insurer which is a subsidiary of another corporation may participate in the plan of its parent or affiliate, however, provided the plan is itself approvable. As regards the employees of the New York domestic insurers, if there is such participation, and the plan is funded through an annuity contract issued by an insurer not licensed to do business in New York State, the plan must be non-contributory. Where there is participation by a domestic company in the plan of its

parent or affiliate, separate experience should be maintained for the domestic company.

(b) Contracts may be issued through the general account of the company or through a separate account approved pursuant to the provisions of Section 227 of the Insurance Law, or a combination of both.

(c) Funding may be in accordance with any of the various actuarial methods acceptable under ERISA provided that:

(i) any past service liability determined at time of plan initiation or plan liberalization shall be amortized over a period not in excess of thirty years, and;

(ii) additional contributions shall be made if necessary to maintain the total funds for active and retired lives at least equal to the minimum reserve requirements noted in (d) below.

(d) Reserves shall be maintained under actuarial methods approved by the Department. Such reserves shall be the greater of the value of the funds accumulated under acceptable funding methods and of the minimum reserves determined as follows:

(i) Active lives - the present value of benefits accrued to the date of valuation on the assumption of plan termination with full vesting for all employees then covered, such present value shall be based on the amount of pension credits accrued to the date of valuation using the latest average salary in case of a final average salary plan with no further salary projection and a mortality table and interest rate acceptable under Section 205 of the New York Insurance Law for the then purchase of deferred annuities, with no allowance for withdrawal other than death - such present value may be reduced by the unamortized value of any past service liability amount if any determined as of the date of plan initiation or plan liberalization and amortized over a period not in excess of 30 years.

The limits stated above do not apply to any pension benefit based on voluntary employee contributions excluding employee contributions required in connection with contributory plans. Plans that are integrated with Social Security may provide higher percentages than those indicated in (a) and (b) above, provided the pension payable out of company funds after integration with Social Security is within the limits set forth herein.

6. Lump Sum Withdrawals

The Department will not approve plans providing for lump-sum payments, except where the amounts of benefit is so small that the administrative costs would otherwise be excessive. Such payments would be in violation of Section 214 of the New York Insurance Law which requires that pursuant to the terms of a retirement plan a company may provide a "pension" benefit which by definition requires regular payments.

7. Variable Benefits

Variable benefits or a combination of variable and fixed dollar benefits may be offered. However, the employee must be given the option of electing exclusively a fixed dollar benefit. The employer's cost to provide a variable benefit shall not exceed the cost of providing the available fixed dollar benefit.

8. Maximum Spouse and other Optional Benefits

Where options are available to a retiring employee, the total actuarial value of the option shall not exceed the actuarial value of the single-life annuity without refund at the death of the employee based upon actuarial tables acceptable to the Department.

9. Application

The provisions recited in these guidelines are objective standards to be applied generally in approving retirement plans under Section 214 of the Insurance Law. Nothing herein shall prevent the Superintendent from approving a plan not conforming to these standards if he deems such plan to be consistent with the purposes of Section 214, or disapproving a plan conforming to these standards if he finds the plan to be inconsistent with these purposes. Approval of plans made prior to the date of this letter continue in effect.

Where a company is participating in the retirement plan of its parent or affiliated company, the plan of the parent or affiliate need not contain the provisions in the form required under the foregoing items. However the domestic company should comply with all requirements insofar as the plan applies to the employees of the domestic company by adding a codicil to the parent or affiliate plan containing such provisions necessary to comply with the requirements of this Circular Letter.