

April 22, 1980

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 5

TO: ALL AUTHORIZED LIFE INSURANCE COMPANIES

RE: INDIVIDUAL ANNUITY POLICIES AND GROUP ANNUITY POLICIES AND CERTIFICATES - MINIMUM PROVISIONS

CHAPTER 662, LAWS OF 1979

Chapter 662, Laws of 1979 added new Sections 160-f, 208-c and 216-a to the New York State Insurance Law and became effective on July 11, 1979. This legislation requires specified contract provisions and non-forfeiture requirements for individual annuity contracts and certain group annuity certificates. Companies have been permitted to file with the Superintendent a written notice of election to comply with the provisions of Section 208-c since July 11, 1979. Such an election must be made no later than January 1, 1981. If a company fails to make such an election, the operative date for such a company will be deemed to be January 1, 1981. Companies have not made elections to comply with the provisions of Section 208-c and recently approved annuity contracts do not comply with the new legislation.

In order to avoid business interruption, new contract forms or amendatory forms, together with a copy of the contracts they amend, should be submitted to the Insurance Department as soon as possible but no later than September 1, 1980 to provide ample time for review and approval by January 1, 1981. To expedite review, filings should state that the forms are intended to comply with Section 208-c. Filings received after September 1, 1980 will be reviewed as expeditiously as possible, but due to the anticipated volume of forms to be filed to comply with the provisions of Chapter 662, Laws of 1979, it may be difficult to complete Department review prior to the January 1, 1981 operative date.

Those insurers that believe their currently approved annuity forms comply with this legislation should submit to the Department duplicate copies of such forms no later than September 1, 1980 to allow the Department ample time to verify compliance.

The attached Appendix sets forth key points to be considered in meeting the requirements of this legislation.

Filings should be made to:

Mr. Raymond A. d'Amico, Chief
Health and Life Policy Bureau
New York State Insurance Department
Agency Building No. 1
Empire State Plaza
Albany, New York 12257

Very truly yours,

[SIGNATURE]

Albert B. Lewis

Superintendent of Insurance

Appendix to Circular Letter No. 5 (1980)

Re: Individual Annuity Policies and Group Policies and Certificate Minimum Provisions

Chapter 662, Laws of 1979

Section 208-c defines minimum benefits for individual deferred annuities in a retrospective manner based on accumulations of portions of gross considerations at specified rates of interest. It replaces Section 208-a and its prospective formula. It is based on the 1976 NAIC Model Act but it has a number of key differences.

To expedite your preparation and our review of submissions, we call your attention to some key points in the New York legislation:

1. Applies to IRA, TSA and certain other group annuity certificates delivered in New York even though the contract is issued outside the state, as well as to individual contracts.
2. Requires prominent disclosure: a) in certain flexible annuity contracts that the contract may not be suitable if the only payment to be made by the contractholder is a substantial single sum; b) if the contract does not provide cash surrender benefits; c) if the contract death benefit is not at least equal to the actual accumulation amount prior to the commencement of any annuity payments.
3. Requires a table of guaranteed paid-up annuity and cash surrender benefits based on certain assumptions.
4. Requires a statement that any paid-up annuity, cash surrenders or death benefits are not less than the minimum required.
5. Requires a betterment of rates provision.
6. Requires a single contract maturity value to be used in formulae determining paid-up annuity benefits and cash surrender benefits.
7. Permits a surrender charge of up to 7% in any year applicable against the actual accumulation value in determining any cash surrender value. This in turn limits any asset re-evaluation procedure in determining cash values.
8. Requires, as a practical matter, that the "actual accumulation amount" defined in 208-c(3)(d) be the basis of minimum values.

In determining the actual accumulation amount:

(a) The amounts to be accumulated are those as defined in the contract and may reflect both percentage and flat charges against the gross considerations

(b) The accumulation interest rate is that as defined in the contract, but never less than 3% in each year. Charges are not allowed directly against the fund, but the contract may define a gross interest rate and a net interest rate as to reflect an annual administrative charge, either as a percentage or as a flat amount, provided the net interest rate is never less than 3% in each year and such rates are properly disclosed.

(c) The contractual accumulation amounts are decreased by (i) withdrawals and partial surrenders and (ii) indebtedness on the contract, and are increased by any existing additional amounts credited to the company on the

contract.

9. Contains lower loading percentages than the 1976 NAIC Model.

10. Permits a provision to provide that inactive contracts may be terminated by the company, after three years, if either the actual accumulation amount or the paid-up monthly annuity benefits are less than certain specified minimum amounts.

11. Requires an annual statement to be sent to contractholders in most circumstances disclosing paid-up annuity, cash surrender and death benefits. A provision to this effect should be included in the contract or certificate.

12. Sets forth limitations and requirements in the guaranteeing or the crediting of additional amounts.