



**STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004**

**Circular Letter No. 8 (1998)  
April 3, 1998**

**TO: ALL INSURERS AUTHORIZED TO WRITE LIFE INSURANCE AND ANNUITIES**

**RE: ISSUES RESULTING FROM THE ENACTMENT OF SECTION 4228 OF THE INSURANCE LAW**

New Section 4228 of the New York Insurance Law (hereinafter referred to as Section 4228), which became effective January 1, 1998, resulted in significant changes in the regulation of agents' compensation. Additionally, Section 4228(h) requires that an actuarial opinion on self-support accompany all individual life insurance policy and individual annuity contract form filings. This Circular Letter provides guidance with respect to some of these changes.

**I. Agents' Compensation - Transition Issues**

Section 4228(g)(4) provides for a transition period that ends December 31, 1998. The following guidance addresses some of the transition issues:

**A. Changes To Compensation Plans That May Be Treated As A Continuation Of A Previously Approved Compensation Plan**

Section 4228(g)(4) provides that a company may, during the transition period, continue to use any plan of compensation, including any expense allowance plan, that it was using on December 31, 1997, unless the Superintendent shall determine that such plan was not approvable at the time it was placed in effect. The department will consider the following modifications to compensation plans made subsequent to January 1, 1998, a continuation of such plan for the purposes of Section 4228 (g)(4). A company may make modifications to:

1. allow the payment of expense allowances, in accordance with Section 4228(e)(3)(B), to agents currently receiving training allowances;
2. amend the standards for eligibility to receive training allowances for agents appointed after January 1, 1998, to comply with the eligibility standards in Section 4228 (e)(3)(C),(D),(E) and (F);
3. annualize expense allowances, premiums and considerations received after January 1, 1998, in accordance with Section 4228(e)(14); and
4. extend an existing plan of compensation to include newly introduced policy or contract forms.

**B. Maximum Training Allowances For Agents Appointed Before January 1, 1998**

1. Section 4228 increases the maximum training allowances and liberalizes the standards used to determine the eligibility of an agent appointed after January 1, 1998, to receive training allowances. For an agent appointed during 1997 and currently receiving training allowance payments, the

method to be used to determine the maximum subsidy is: 1/12th of the sum of (a) completed months of service prior to January 1, 1998, in that agent contract year times the old maximum contractual limit for that year and (b) the remaining number of months of service in that agent contract year times the new maximum contractual limit for that year.

A company may adopt an alternative method for any remaining fractional portion of a training year, as long as it uses the rule for all trainees and in the aggregate the rule has no bias in favor of giving more credit for incomplete years than the monthly method described above.

2. Any agent who was eligible to receive a training allowance pursuant to Regulation 50 and is currently receiving a training allowance may continue to do so.

3. An agent appointed during 1997 who was not eligible to receive a training allowance pursuant to Regulation 50, but who would be eligible pursuant to Section 4228 (except for the date of appointment) may be deemed eligible to receive a training allowance. Such training allowance shall be based on premiums received on or after January 1, 1998, consistent with the company's training allowance limits for the remaining training allowance period after January 1, 1998, measured from the date of appointment as an agent. A company with multiple starting compensation levels for its new agents, may calculate this training allowance, using the assumption that all such agents have started at the mid-point of the starting compensation levels.

## **II. Self-Support - Interim Guidance For Complying With Section 4228(h)**

A. Pending the issuance of a self-support regulation, statements of self-support and demonstrations of self-support should be prepared based on the following:

1. A Statement of Self-Support shall be based upon a Demonstration of Self-Support;
2. The Statement of Self-Support and Demonstration of Self-Support should be prepared based upon a reasonable good faith interpretation of the requirements of Section 4228(h);
3. The provisions of Regulation 74 "Life and Annuity Cost Disclosure and Sales Illustrations" may be used as guidance in preparing the Demonstration of Self-Support for life insurance policy forms subject to such regulation;
4. A Demonstration of Self-Support for a policy or contract form and its associated rider forms may be performed either by testing each issuable combination of the policy or contract form and its associated rider form as a separate form or by testing the policy or contract form and each rider form separately. It is acceptable to ignore for the purposes of a Demonstration of Self-Support, supplementary benefits which in the opinion of the actuary are *de minimis* and on which the compensation rate is no greater than the compensation rate for the policy or contract form, such as:
  - a. premiums or considerations waived due to disability,
  - b. accidental death or dismemberment,
  - c. options to purchase additional insurance,
  - d. insurance on children when such insurance is attached to a policy covering an adult,
  - e. accelerated death benefits, or
  - f. risk of divorce or separation or tax law changes affecting policyholders or beneficiaries;
5. For each Statement of Self-Support, a Demonstration of Self-Support, signed by an actuary who meets the qualifications of Section 4228(h), shall be retained in the company's home office, while the policy or contract form is being offered for sale and for a period of six years thereafter and be available for inspection;
6. The Statement of Self-Support should include the following:

- a. a declaration that the actuary signing the Statement is authorized in writing by the company to execute the Statement;
- b. a declaration that the actuary signing the Statement is qualified to do so under Section 4228(h);
- c. an actuarial opinion that the subject policy or contract form is self-supporting based on reasonable assumptions as to interest, mortality, persistency, taxes, agents' survival, expenses and other relevant factors;
- d. a declaration that a Demonstration of Self-Support for the subject policy or contract form has been performed;
- e. a declaration that, for the subject policy or contract form, the requirements of section 4228(h) have been met; and
- f. a declaration as to whether fully allocated expenses were assumed in the Demonstration of Self-Support;

7. A policy or contract form filing or compensation plan filing will be returned as incomplete if the Statement of Self-Support is not included with the filing; and

8. If a company fails to prepare, retain or upon request submit a Demonstration of Self-Support required under section 4228(h), the superintendent may disapprove the affected policy or contract form filing or agent compensation filing, or may withdraw approval of a compensation plan or policy or contract form previously approved.

B. The filing of a Statement of Self-Support:

1. simultaneously with a filing of a policy or contract form under Section 3201, shall be sent to Kathleen Nelligan, Associate Insurance Attorney, New York State Insurance Department, Life Bureau, Empire State Plaza, Albany, New York 12257;
2. simultaneously with the filing of the required notification of a change in the rate scale for a policy form subject to Section 4231(g)(1)(D) or Section 4232(b), shall be sent to William Carmello, Assistant Chief Life Actuary, New York State Insurance Department, Life Bureau, Empire State Plaza, Albany, New York 12257; and
3. simultaneously with a filing of a compensation plan required by Section 4228(f)(1), for each policy or contract form affected by the compensation plan, shall be sent to Donald Pearsall, Assistant Chief Life Actuary, New York State Insurance Department, Life Bureau, 25 Beaver Street, New York, New York 10004.

Very truly yours,

Martin F. Carus  
Assistant Deputy Superintendent  
and Chief, Life Bureau