

**NEW YORK STATE
INSURANCE DEPARTMENT**

**THIRD AMENDMENT TO REGULATION NO. 47
(11 NYCRR 50)**

SEPARATE ACCOUNTS AND SEPARATE ACCOUNT ANNUITIES

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, and 4240 of the Insurance Law, do hereby promulgate the following Third Amendment to Part 50 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 47), to take effect upon publication in the State Register, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

Paragraph (4) of Section 50.1(a) is amended to read as follows:

(4) *Variable annuity contract* means a separate account annuity contract which includes provision for deferred or immediate annuity payments the amount of which, after such payments have commenced, varies according to the investment experience of any separate account maintained by the insurer as to such contract, as provided in section [227] 4240 of the Insurance Law, as amended.

Paragraph (2) of Section 50.3(a) is amended to read as follows:

(2) A separate account annuity contract may provide, pursuant to section [4240(a)(2)] 4240(a)(12) of the Insurance Law, that the portion of the assets of the separate account not exceeding the reserves and other contract liabilities with respect to such separate account shall not be chargeable with liabilities arising out of any other business of the insurer.

Subparagraph (ii) of Section 50.3(a)(4) is amended to read as follows:

(ii) the investments of such investment company comply with the restrictions and limitations on investments by the insurance company imposed by section [227.1(b)] 4240(a)(2) of the Insurance Law and any other provisions of such law; and

Paragraph (5) of Section 50.3(a) is amended to read as follows:

(5) Expenses shall be allocated to the separate account business in accordance with the provisions of section [4240(b)] 4240(a)(6) of the Insurance law and Part 91 of Title 11 of the Official Compilation of Codes, Rules and Regulations (regulation No. 33).

Paragraph (1) of Section 50.6(a) is amended to read as follows:

(1) Each variable annuity contract delivered or issued for delivery in this State shall provide that neither expenses actually incurred, other than taxes on the investment return, nor mortality actually experienced, shall adversely affect the dollar amount of variable annuity payments to any annuitant for whom variable annuity payments have commenced. Where a group variable annuity contract provides that the scale of charges to be made against the assets of a separate account may be changed without the consent of the participants for whom variable annuity payments have commenced, the contract shall provide that such changes may not adversely affect the dollar amount of variable annuity payments which have commenced. The method of computing the dollar amount of variable annuity payments shall be such that, if the annual rate of investment return of the separate account, as defined in section [50.1(a)(7)] 50.1(a)(6) hereinabove, were six and one-half percent at all times from the issue of the contract, such amounts would not decrease. The superintendent may authorize the use of other methods or rates in computing the dollar amount of variable annuity payments where such methods or rates are determined by the superintendent to be fair, equitable, reasonable and not less favorable to the participants or annuitants.

The opening paragraph of paragraph (2) of Section 50.6(a) is amended to read as follows:

(2) The reserve liability for variable annuities shall be established in compliance with the applicable provisions of section [205] 4217 of the Insurance Law, as amended, and in accordance with actuarial procedures that recognize the variable nature of the benefits provided and their dependence on the net investment return of the separate account or accounts. With respect to individual variable annuities, the mortality table used in calculating the reserve liability shall be:

Section 50.8 is amended to read as follows:

§ 50.8 Illustrations of benefits payable under separate account annuity contracts.

Illustrations of benefits payable under any separate account annuity contract, which are incorporated in or attached to any such contract or are utilized in advertising or sales material relating to any such contract, shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing herein contained shall prohibit the use of hypothetical rates of investment return, clearly designated as such, to illustrate possible levels of variable annuity payments, if the use of such hypothetical rates is not in conflict with applicable requirements of the Securities and Exchange Commission. If any hypothetical rate of investment return is used for illustration purposes, a corresponding additional illustration shall also be included using a hypothetical rate of investment return at least at the same interval below the pivotal rate of investment return. As used herein, the "pivotal rate of investment return" is the smallest annual rate of investment return, as defined in section [50.1(7)] 50.1(a)(6) hereinabove, which must be earned by the separate account if the dollar amount of variable annuity payments is not to decrease. Except as approved by the superintendent, no hypothetical rate of investment return in excess of eight percent may be used in such illustrations.

Section 50.11 is repealed and Section 50.12 is renumbered to be Section 50.11.

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Third Amendment to Part 50 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 47), promulgated by me on November 12, 2002, pursuant to the authority granted by Sections 201, 302 and 4240 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on September 11, 2002. No other publication or prior notice is required by statute.

Gregory V. Serio
Superintendent of Insurance

November 12, 2002