NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
FIRST AMENDMENT TO 11 NYCRR 97
(INSURANCE REGULATION 128)

MARKET VALUE SEPARATE ACCOUNTS FUNDING GUARANTEED BENEFITS; SEPARATE ACCOUNT OPERATIONS AND RESERVE REQUIREMENTS

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 1403, 1405, 1414, 4217, and 4240 of the Insurance Law, do hereby promulgate the First Amendment to Part 97 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 128) to take effect upon publication in the State Register, to read as follows:

(New Matter is Underscored; Matter in Brackets is Deleted)

Section 97.2(b) is amended to read as follows:

(b) For separate accounts otherwise subject to this Part and established prior to the effective date of this Part:

(1) Those [which] <u>that</u> were required in writing by the superintendent as a condition for approval [fo] <u>to</u> comply with the requirements of this Part shall comply immediately to the extent so required.

(2) Those [which] <u>that</u> are used to fund contracts issued after such effective date shall comply immediately.

(3) All others shall comply immediately with all sections other than section 97.4 of this Part.

Section 97.2(d) is amended to read as follows:

(d) Where the funding of the applicable contracts or agreements in subdivision (a) of this section is by a combination of general account assets (other than those referred to in section 97.5(c) of this Part) and of separate account assets valued at market, then effective January 1, 1993 this Part applies to the appropriate portion of the benefits [which are] <u>that is</u> funded by the separate account. However, the requirement for the separate account may require integration of the reserve and asset valuation procedures with the general account portion and be based on combined procedures no less conservative than as required by this Part if the contract were considered to be subject in full to this Part.

Section 97.3(j) is amended to read as follows:

(j) *Duration matched* means, with respect to a separate account or a subportfolio thereof funding specified guaranteed contract liabilities as described in the plan of operations pursuant to section 97.4(b)(11) of this Part, that at least 80 percent of the market value of the separate account assets or the subportfolio thereof [consist] <u>consists</u> solely of cash and/or one or more of the following securities (and hedging instruments purchased in connection therewith): short-term debt, United States government obligations, investment grade obligations and investment grade commercial mortgage loans; and, after taking into account any prepayment provisions of such securities and the provisions of such hedging instruments, payments to be made from the separate account assets (or the subportfolio thereof) are in the aggregate substantially certain both in amount and timing and the duration of the separate account assets (or the subportfolio thereof) differs from the duration of the guaranteed contract liabilities (or, in the case of a subportfolio of assets, the duration of such specified guaranteed contract liabilities) by less than one-half year; provided that, to the extent that guaranteed contract liabilities are denominated in the currency of a foreign country rated in one of the two highest rating categories by an independent nationally recognized United States rating agency acceptable to the superintendent and are supported by investments denominated in the currency of such foreign country, duration matching may be determined by utilizing spot rates of substantially similar securities denominated in the currency of such foreign country.

Section 97.3(r) is amended to read as follows:

(r) *Macaulay duration* means, with respect to a sequence of anticipated payments A 1, A 2, …A n occurring at times t 1, t 2, … [A] t n from the valuation date (whether such payments represent anticipated benefits payable consistent with the minimum value of guaranteed contract liabilities under section 97.5(k) of this Part or whether such payments represent anticipated asset cash flows consistent with actual or assumed market values) the quotient of (a) divided by (b) where

$$(a) = \sum_{j=1}^{n} t_j A_j V_j^{t_j} ,$$

$$(b) = \sum_{j=1}^{n} A_j V_j^{t_j} ,$$

$$[V_j^{t_j} = (1 + 1_j)^{-t_j}]\underline{V_j^{t_j} = (1 + i_j)^{-t_j}} \text{, and}$$

i_j is the discount rate used under section 97.5(k) of this Part.

Thus, for benefits payments corresponding to guaranteed contract liabilities referred to in section 97.5(k) of this Part, the denominator, *i.e.*, (b) above, is identical to the value P, the base amount of guaranteed contract liabilities described in that section.

Section 97.4(b)(3) is amended to read as follows:

(3) a description of how the guaranteed contract liabilities are to be valued, including with respect to fixed or guaranteed minimum benefits, a description of the methodology for calculating spot rates and the rates proposed to be used to discount guaranteed contract liabilities if higher than the applicable spot rates, provided that the rate or rates used shall not exceed [104.5 percent of the spot rate, except that if the expected time of payment of a contract benefit is more than 30 years, it shall be discounted from the expected time of payment to year 30 at a rate of no more than the lesser of six percent and of 80 percent of the 30-year spot rate and for 30 additional years at a rate not greater than 104.5 percent of the 30-year spot rate,] the maximum rates allowed to be used to calculate the minimum value of guaranteed contract liabilities described in section 97.5(k) of this Part, and must conservatively reflect expected investment returns (taking into account foreign exchange risks);

Section 97.4(d) is amended to read as follows:

(d) Notwithstanding the descriptions in the plan of operations, the insurance company may change the rate used pursuant to section 97.5(k) of this Part to discount guaranteed contract liabilities and other items applicable to the separate account, such as if the investment portfolio is different from that anticipated by the plan of operations, provided that the rate or rates used shall not exceed [104.5 percent of the spot rate (except that if the expected time of payment of a contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than the lesser of six percent and of 80 percent of the 30-year spot rate and for 30 additional years at a rate not greater than 104.5 percent of the 30-year spot rate)] <u>the maximum rates allowed to be used to calculate the minimum value of guaranteed contract liabilities described in section 97.5(k) of this Part,</u> and must conservatively reflect expected investment returns (taking into account any foreign-exchange risks). Any such change must be disclosed and justified in the actuary's opinion and memorandum submitted pursuant to section 97.6 of this Part.

Section 97.5(g)(1)(iii) is amended to read as follows:

(iii) Any separate account assets that do not comply with the limitations of this paragraph shall, to the extent that such assets exceed such limitations, be subject to an additional deduction of 10 percent of the market value thereof in determining the <u>asset</u> maintenance and reserve requirements in subdivisions (b) and (c) of this section.

Section 97.5(j) is amended to read as follows:

(j) The account contracts may provide for the allocation to one or more supplemental accounts of all or any portion of the amount needed to meet the [minimum] asset <u>maintenance</u> requirement. If the account contract provides that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurer, the insurance company shall maintain in a supplemental account the amount of any separate account assets in excess of the amounts contributed by the contract holder and the earnings thereon in accordance with the contract.

Section 97.5(k) is amended to read as follows:

(k) For purposes of this Section, the minimum value of guaranteed contract liabilities is defined to be an amount equal to the product of P and (1 + x), where P is the base amount of guaranteed contract liabilities, and x is the contract risk factor determined at least annually in accordance with subdivision (l) of this section. The base amount of guaranteed contract liabilities, P, shall be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to the expected time of payment of the contract benefit that is not greater than the maximum multiple of the spot rate supportable by the expected return from the separate account assets [(and in no event greater than 104.5 percent of the spot rate)] as described in the plan of operations or the actuary's opinion and memorandum (pursuant to [the]section 97.4(d) of this Part) [, except that if the expected time of payment of a contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than the lesser of six percent and 80 percent of the 30 year spot rate and for 30 additional years at a rate not greater than 104.5 percent of the 30-year spot rate]. <u>In no event shall the discount rates exceed the rates given in the following table:</u>

Years from Valuation Date to Payment Date	Maximum Discount Rate
$0 \leq t \leq 10$	Max (105% x S_t, Min(S_t + 1%, 2%))
$10 < t \leq 30$	Min (9%, Max(105% x S_t, Min(S_t + 1%, 3%)))
$30 < t$	Min (6%, 80% x S_t) for discounting from duration t to duration 30

where t is the length of time in years between the valuation date and the expected date of the cashflow payment, and S_t is the spot rate for time t. In projecting cash flows for annuity and life insurance benefits, the mortality tables for such benefits prescribed or authorized by section 4217 of the Insurance Law shall be used.

Section 97.5(l)(2)(ii)*(a)(2)* is amended to read as follows:

(2) the number of years form the valuation date for which interest rates provided in the contract are guaranteed to exceed the last published calendar year statutory valuation interest rate for life insurance policies (other than single premium policies of the kind referred to in section 4217(c)(4)(B)(vi) of the Insurance Law) with guarantee durations in excess of 20 years; and

Section 97.5(m)(1) is amended to read as follows:

(1) Where any guarantee (whether for fixed benefits or guaranteed minimum benefits) is provided under a separate account valued at market, the amount accumulated from risk charges deducted from considerations received or from the separate account, net of losses and the amount of losses, shall be shown in the annual statement. This may be shown as a footnote to the appropriate line in the analysis of operations by line of business pertaining to net transfers to [or (from)] (or from) the separate account. The footnote should include the amounts for the current year and the cumulative amounts from inception to date.

Section 97.5(n) is amended to read as follows:

(n) The superintendent may modify the application of any provision of this section upon application of the insurance company, if the company can demonstrate to the satisfaction of the superintendent that it has provided other appropriate and equally effective safeguards against the risks and uncertainties addressed in this section.

Section 97.6(a) is amended to read as follows:

(a) An insurance company that maintains one or more separate accounts subject to this Part shall submit to the superintendent annually an actuarial opinion by March 1st and an actuarial memorandum by March 15th [to the superintendent annually by March 1st] following the December 31st valuation date showing the status of such accounts as of December 31st. The actuarial opinion and memorandum must be in form and substance satisfactory to the superintendent.

Section 97.6(b) is amended to read as follows:

(b) The actuarial opinion shall state that, after taking into account any risk charge payable from the separate account assets and the amount of any reserve liability of the general account with respect to the asset maintenance requirement, the account assets make good and sufficient provision for contract liabilities. The opinion shall be accompanied by a certificate of an officer of the company responsible for the daily monitoring of compliance with the asset maintenance and reserve requirements for such separate accounts, describing the extent to and manner in which during the preceding year:

Section 97.6(c) is amended to read as follows:

(c) The actuarial opinion shall cover the applicable points set forth in section [95.7] 95.8 of Part 95 of this Title.

Section 97.7 is amended to read as follows:

§ 97.7 Mandatory securities valuation reserve.

When the insurance company values separate account assets at market and complies with the asset maintenance requirements of section 97.5 of this Part, it need not maintain [a mandatory securities] an asset valuation reserve or an interest maintenance reserve with respect to such assets.

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the First Amendment to Part 97 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 128), entitled "Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements," signed by me on June 9 , 2014 pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 1403, 1405, 1414, 4217, 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 rule was published in the State Register on April 23, 2014. No other publication or prior notice is required by statute.

Benjamin M. Lawsky
Superintendent of Financial Services

Date: June 9 , 2014