

**NEW YORK STATE  
INSURANCE DEPARTMENT**

**SECOND 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 Second 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)

The statutory authority references for Part 50 are repealed and a new statutory authority is added to read as follows:

Insurance Law Sections 201, 301, and 4240

Paragraphs (2) and (3) of Section 50.1(a) are amended to read as follows:

(2) *Separate account* or *separate accounts* mean an account or accounts established pursuant to section [227] 4240 of the Insurance Law, as amended.

(3) *Separate account annuity contract* means any contract which provides that amounts paid to the insurer to provide for annuities shall be allocated by the insurer, in whole or in part, to one or more separate accounts pursuant to section [227] 4240 of the Insurance Law, whether such annuities are payable in fixed or variable amounts or both.

Paragraph (5) of Section 50.1(a) is repealed.

Paragraphs (6) and (7) of Section 50.1(a) are renumbered to be paragraphs (5) and (6), respectively, and paragraph (5) as renumbered is amended to read as follows:

(5) *Accumulated value* means the number of accumulation units credited to a contractholder or to a certificateholder, as the case may be, multiplied by the value of an accumulation unit, or the value of a contractholder's or certificateholder's account determined by any other method consistent with the provisions of section [227.1(a)] 4240(a)(1) of the Insurance Law.

Paragraph (3) of Section 50.2(a) is repealed, and paragraphs (4), (5), and (6) are renumbered to be paragraphs (3), (4), and (5), respectively.

The opening paragraph of Section 50.3(a) is amended to read as follows:

(a) Every separate account established pursuant to section [227] 4240 of the Insurance Law, as amended, shall be subject to the following provisions of this section:

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

(2) A separate account annuity contract may provide, pursuant to section [227.1(j)] 4240(a)(2) 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.

The opening paragraph of Section 50.3(a)(4) is amended to read as follows:

(4) Notwithstanding the restrictions and limitations on investments imposed by section [227.1(b)] 4240(a)(2) of the Insurance Law or any other provision of law, the assets allocated to any separate account may be invested in the securities of an investment company subject to or registered pursuant to the Federal Investment Company Act of 1940, as amended, provided that:

Subparagraph (iv) of Section 50.3(a)(4) is repealed.

Paragraphs (5), (6), (7), (8), and (9) of Section 50.3(a) are amended to read as follows:

(5) Expenses shall be allocated to the separate account business in accordance with the provisions of section [227.1(e)] 4240(b) of the Insurance Law and Part 91 of Title 11 of the Official Compilation of Codes, Rules and Regulations (regulation No. 33).

[(6) Each company issuing separate account annuity contracts shall maintain a record of the special contingent reserve fund showing progress in the repayment of the fund and the sum of advances from surplus made to establish or maintain the fund. A current statement of such record as of the end of each calendar year shall be filed with the superintendent on or before March 1 of the next following calendar year.]

[(7)] (6) Conflicts of interest rules under any provision of the Insurance Law or any regulation promulgated thereunder which are applicable to the officers or directors of insurance companies shall also apply to the members of the committee, board or other similar body of every separate account. No officer or director of any company maintaining a separate account nor any member of the committee, board or other similar body of the separate account shall receive, in addition to his fixed salary or compensation, any commission, other compensation, money or valuable thing either directly or indirectly, with respect to the purchase, sale or loan of the assets of the separate account.

[(8)] (7) A separate account annuity contract may provide, as an incidental benefit, for the payment of a death benefit in the event of death prior to the annuity commencement date. The amount of such death benefit shall not exceed the greater of

(i) the accumulated value of the contract, or

(ii) the aggregate amount of stipulated payments or employee contributions, whichever is applicable, made under the contract prior to the time of death.

A reserve liability for any such incidental benefit in excess of the accumulated value of the contract shall be accumulated and maintained in the general account of the company [pursuant to a plan for such accumulation which specifies a reasonable maximum target for such reserve and is approved by the superintendent as otherwise reasonable. Unless otherwise approved by the superintendent, the amount of any death claim in excess of the accumulated value of the contract paid pursuant to such incidental death benefit provision shall be charged against such reserve until such reserve is exhausted and shall then be charged against the special contingent reserve fund] and must be in compliance with Part 99 of this Title. Any such death benefit provision which complies with the requirements of this paragraph shall not be subject to the provisions of the Insurance Law applicable to life insurance contracts. However, any other death benefit provision during the deferred period shall be subject to such Insurance Law provisions.

[(9)] (8) A separate account annuity contract may provide that, at the time the annuity becomes payable, the insurer may, at its option, in lieu of commencing annuity payments, cancel the annuity and pay the contractholder its accumulated value, if such accumulated value is less than \$2000, or would provide an income the initial amount of which is less than \$20 per month or if the amount of the annuity does not meet other minimum requirements as approved in writing by the superintendent.

Section 50.4 is amended to read as follows:

§ 50.4 Insurer contributions to separate accounts.

(a) A company which establishes one or more separate accounts pursuant to section [227] 4240 of the Insurance Law, as amended, may, upon the establishment and during the initial stages of such separate accounts and for the purpose of providing for effective and economical diversification of investments by such separate accounts so as to facilitate their orderly establishment and maintenance, participate therein by allocating and contributing to such separate accounts as a participant but for a limited period and without the purpose of funding annuities, funds which it might otherwise invest, in accordance with [subdivisions 13 and 17 of ] section [81] 1405 of the Insurance Law, in the same type of securities as may be purchased for the separate accounts. The insurer shall have a proportionate interest in any such account, along with all other participating contractholders, to the extent of its participation therein and with respect thereto shall be subject to all the provisions of section [227]4240 of the Insurance Law applicable to separate account contractholders generally.

(b) [The] Except as may otherwise be permitted in writing by the superintendent, the aggregate amount, net of withdrawals made pursuant to subdivision (d) of this section 50.4, so allocated and contributed by the company in accordance with the foregoing subdivision (a) to one or more separate accounts, shall not exceed the least of

- (1) \$500,000, plus not more than \$125,000 for each separate account in excess of four to which the company so allocates and contributes funds, or
- (2) one percent of the company's admitted assets as of December 31 next preceding, or
- (3) five percent of the company's surplus to policyholders as of said date.

(c) All sums allocated and contributed by the company pursuant to this section to a separate account for the purpose of participating therein shall be included in applying the [following] investment limitations[:] specified in section 1405 of the Insurance Law.

- [(1) the 10 percent limitation specified in item (2) of paragraph (b) of subdivision 1 of section 227 of the Insurance Law;
- (2) the five percent limitation specified in paragraph (b) of subdivision 13 of section 81 of the Insurance Law; and
- (3) the three and one-half percent limitation specified in subdivision 17 of section 81 of the Insurance Law.]

(d) The company may at any time, in whole or in part, withdraw its contributions to a separate account made pursuant to this section, whereupon it shall be entitled to receive therefrom its proportionate share of the value of the assets of the separate account as of the time of withdrawal.