

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
FOURTH AMENDMENT TO 11 NYCRR 50
(INSURANCE REGULATION 47)**

SEPARATE ACCOUNTS AND SEPARATE ACCOUNT CONTRACTS

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 1106, 3201, 3222, 4240, and 4525 of the Insurance Law, do hereby promulgate the Fourth Amendment to Part 50 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 47), to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(NEW MATTER UNDERSCORED, DELETED MATTER IN BRACKETS)

The title of Part 50 is amended to read as follows: Separate Accounts and Separate Account [Annuities] Contracts.

A new Subpart 50-1 is added to Part 50, and is entitled to read as follows: Separate Accounts and Separate Account Contracts Prior to January 1, 2023.

Sections 50.1 through 50.11 are removed from Part 50 and added to Subpart 50-1, and renumbered as sections 50-1.1 through 50-1.11.

A new section 50-1.0 is added to new Subpart 50-1 to read as follows:

Section 50-1.0 Scope.

(a) Subpart 50-1 shall apply to all separate account contracts, as defined in section 50-2.3 (a)(6) of Subpart 50-2 of this Part, delivered or issued for delivery in this State prior to January 1, 2023 except as provided in Parts 40, 44, and 97 of this Title (Insurance Regulations 139, 127, and 128) and only with respect to amounts allocated to one or more separate accounts, whether the separate accounts are established pursuant to Insurance Law section 4240 or otherwise. Notwithstanding the forgoing, the maximum surrender charge authorized in section 50-1.7(a)(3) shall apply to separate account contracts delivered or issued for delivery in this State prior to January 1, 2024.

(b) Subpart 50-1 shall apply to all separate accounts established pursuant to Insurance Law section 4240 prior to January 1, 2023 that are used solely in connection with separate account contracts delivered or issued for delivery prior to January 1, 2023.

(c) Subpart 50-1 shall apply to all separate account plans of operation required to be filed in this State for separate accounts that are used solely in connection with separate account contracts delivered or issued for delivery prior to January 1, 2023.

(d) Section 50-1.10 shall apply to all separate accounts of any authorized foreign insurer or United States branch of any alien insurer used solely in connection with separate account contracts delivered or issued for delivery prior to January 1, 2023.

Section 50-1.1(a) is amended to read as follows:

(a) Wherever used in this [Part] Subpart, the following terms shall have the respective meanings hereinafter set forth or indicated, unless the context otherwise requires:

The lead-in sentence of section 50-1.2(a) is amended to read as follows:

(a) Before any authorized insurance company can qualify to deliver or issue for delivery any separate account annuity contract within this State, it shall, in addition to complying with the applicable provisions of the Insurance Law and the other provisions of this [Part] Subpart, submit the following information to the superintendent:

Section 50-1.3(a)(3) and (6) are amended to read as follows:

(3) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made:

(i) by a transfer of cash; or

(ii) by a transfer of securities having a valuation which can be readily determined in the marketplace, provided that such transfer of securities is approved by the superintendent.

The superintendent may authorize other transfers among such accounts if, in [his] the superintendent's opinion, such transfers would not be inequitable.

* * * * *

(6) [Conflicts] Conflict of interest rules under any provision of the Insurance Law or any regulation promulgated thereunder which are applicable to the [offices] 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] a 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.

Section 50-1.6(a)(1) is amended to read as follows:

(a) Every variable annuity contract shall be subject to the following provisions:

(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)(6)] 50-1.1(a)(6) of this [Part] Subpart, 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 participants or annuitants.

Section 50-1.7(b)(2) is amended to read as follows:

(2) A provision, with an appropriate reference thereto in the certificate, specifying the options available to an annuitant who contributes to the cost of [his] the annuity, or to [his] the annuitant's beneficiary or beneficiaries in the event of:

(i) the termination of [his] employment or the termination of the group separate account annuity contract, while the annuitant is alive and prior to the commencement date of the annuity; or

(ii) [his] the annuitant's death prior to the commencement date of the annuity. Such options shall, in any case, include either:

(a) an option to receive a cash payment at least equal to the aggregate amount of the annuitant's contributions made under the contract, without interest; or

(b) an option to receive a cash payment equal to the accumulated value of the annuitant's contributions made under the contract.

Section 50-1.8 is amended to read as follows:

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 United States 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(a)(6)] 50-1.1(a)(6) of this [Part] Subpart, 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 50-1.9 is amended to read as follows:

(a) Each company issuing any separate account annuity contract shall at least once in each contract year mail or deliver to every separate account annuity contractholder, addressed to [his] the contractholder’s last post office address known to the company or delivered in person or electronically in a manner agreed to between the insurer and contractholder, a statement or statements reporting the investments held in the separate account and, in addition, in the case of contracts under which benefit payments have not yet commenced, a statement reporting as of a date not more than four months prior to the date of mailing or delivery, the number of accumulation units credited to such contracts, and the dollar value of each such unit or the total value of the contractholder's account, except that such statements need not be mailed or delivered with respect to such contracts which have been issued not more than four months prior to the date of the mailing or delivery. “Contractholder,” as used in this subdivision, shall include a [certificateholder] certificate holder who has accumulation units credited to [his] the certificate holder’s account. Such statement may be distributed to the [certificateholder] certificate holder by [delivery thereof] providing the statements to the contractholder pursuant to a bona fide plan [which] that provides for the further distribution of such statement or statements to the [certificateholders] certificate holders.

(b) Each company issuing any separate account annuity contract shall submit annually to the superintendent, in such form as [he] the superintendent may prescribe, a statement of the business of its separate account or accounts.

Section 50-1.10 is amended to read as follows:

No authorized foreign insurer or United States branch of an alien insurer shall deliver or issue for delivery within this State any separate account annuity contract unless the insurer shall comply substantially with the provisions of this [Part which] Subpart that in the judgment of the superintendent are reasonably necessary to protect the interests of the people of this State.

Section 50-1.11 is amended to read as follows:

If any provision of this [Part] Subpart shall be held invalid, the remainder of the [Part] Subpart shall not be affected thereby.

A new Subpart 50-2 is added to Part 50, and is entitled to read as follows: Separate Accounts and Separate Account Contracts on or after January 1, 2023.

(ALL MATTER IS NEW)

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Section 50-2.1 Purpose.

The purpose of this Part is to prescribe the terms and conditions under which authorized insurers may deliver or issue for delivery separate account annuity contracts and separate account funding agreements in this State and the procedures for establishing and maintaining such separate accounts.

Section 50-2.2 Scope.

(a) Subpart 50-2 shall apply to all separate account contracts, as defined in section 50-2.3(a)(6) of this Subpart, delivered or issued for delivery in this State on or after January 1, 2023 except as provided in Parts 40, 44, and 97 of this Title (Insurance Regulations 139, 127, and 128) and only with respect to amounts allocated to one or more separate accounts, whether the separate accounts are established pursuant to Insurance Law section 4240 or otherwise. Notwithstanding the forgoing, the maximum surrender charge authorized in section 50-2.9(a)(3) of this Subpart and the withdrawal benefit provisions of section 50-2.9(h) of this Subpart shall apply to separate account contracts delivered or issued for delivery in this State on or after January 1, 2024.

(b) Subpart 50-2 shall apply to all separate accounts established pursuant to Insurance Law section 4240 on or after January 1, 2023. Subpart 50-2 shall further apply to all separate accounts used in connection with separate account contracts delivered or issued for delivery on or after January 1, 2023 regardless of when the separate account was established.

(c) Subpart 50-2 shall apply to all separate account plans of operation required to be filed in this State for separate accounts established pursuant to Insurance Law section 4240 on or after January 1, 2023. Subpart 50-2 shall further apply to all separate account plans of operation used in connection with separate account contracts delivered or issued for delivery on or after January 1, 2023 regardless of when the separate account was established.

(d) Section 50-2.12 shall apply to all separate accounts of any authorized foreign insurer or United States branch of any alien insurer used in connection with separate account contracts delivered or issued for delivery in this State on or after January 1, 2023.

Section 50-2.3 Definitions.

(a) Wherever used in this Subpart, the following terms shall have the respective meanings hereinafter set forth or indicated, unless the context otherwise requires:

(1) *Insurer* means an authorized life insurance company, United States branch of an alien insurance company entered through this state, and authorized fraternal benefit society, unless otherwise provided in this Subpart.

(2) *Fixed benefits* means benefits in which the amounts payable or credited are not a result of direct participation in the actual investment performance of the separate account and which guarantee that there will be no loss of principal due to investment performance.

(3) *Guaranteed index benefits* means fixed benefits that credit interest as determined by a formula based on an external index, such as the Standard & Poor's 500 Composite Stock Price Index.

(4) *Non-guaranteed index benefits* means benefits in which the value increases or decreases as determined by a formula based on an external index, such as the Standard & Poor's 500 Composite Stock Price Index, and allows for the loss of principal as a result of performance of the formula.

(5) *Separate account* or *separate accounts* mean an account or accounts established pursuant to Insurance Law section 4240, as amended or established pursuant to the laws and regulations of the insurer's domiciliary state.

(6) *Separate account contract* means any annuity contract or certificate or funding agreement that provides that the insurer shall allocate the amounts paid to the insurer, in whole or in part, to one or more separate accounts, whether amounts under the contract are credited or are payable in fixed or variable amounts or both.

(7) *Variable benefits* means benefits for which:

(i) amounts credited are a result of direct participation in the actual investment performance of the separate account;

(ii) amounts credited are a result of direct participation in the actual investment performance of the separate account, subject to guaranteed minimum benefits; or

(iii) deferred or immediate annuity payments, after the payments have commenced, reflect direct participation in the actual investment performance of the separate account regardless of whether the payments are subject to a minimum guarantee.

(8) *Accumulated value* means:

(i) for a unitized separate account, the number of accumulation units credited to a contract holder or to a certificate holder, as the case may be, multiplied by the value of an accumulation unit, or the value of a contract holder's or certificate holder's account determined by any other method consistent with Insurance Law section 4240(a)(1);

(ii) for a non-unitized separate account providing variable benefits, any method consistent with Insurance Law section 4240(a)(1);

(iii) for a non-unitized separate account that provides fixed benefits other than index-linked benefits, the actual accumulation amount determined in accordance with Insurance Law section 4223(c)(2) for contracts and certificates that would be subject to Insurance Law section 4223 if issued from the general account and the accumulation fund, as defined in Part 40 of this Title (Insurance Regulation 139) for contracts and certificates that would not be subject to Insurance Law section 4223 if issued from the general account;

(iv) for a non-unitized separate account that provides guaranteed index benefits, the greater of the minimum accumulation value and the equity index value determined in accordance with Insurance Law section 4223(c)(4); or

(v) for a non-unitized separate account that provides non-guaranteed index benefits, the non-guaranteed index value determined pursuant to subdivision (d) of section 50-2.9 of this Subpart.

(9) *Investment return* means the investment income plus capital gains less capital losses, whether realized or unrealized, on the assets of the separate account, less taxes incurred thereon, adjusted for any increase or decrease in reserves for potential taxes.

(10) *Step credit* means the crediting of a predetermined specified amount in the event of any flat or positive performance of an index.

Section 50-2.4 Qualification of insurers to issue separate account contracts.

(a) Before any authorized insurer may qualify to deliver or issue for delivery in this State any separate account contract, the insurer shall, in addition to complying with the applicable provisions of the Insurance Law and the other sections of this Subpart, submit the following information to the superintendent:

(1) a description of the kinds and characteristics of separate account contracts the insurer intends to deliver or issue for delivery;

(2) a description of the proposed method of operating the separate account or accounts established or to be established with respect to such separate account contracts;

(3) if requested by the superintendent, biographical data with respect to the officers and directors of the insurer and the members of the committee, board or other similar governing body of the separate account;

(4) with respect to an authorized foreign insurer, if requested by the superintendent, a copy of the laws and regulations of its domiciliary state under which the insurer is authorized to issue such separate account contracts; and

(5) such further information as the superintendent may require.

Section 50-2.5 Separate accounts.

(a) A separate account contract may provide that some or all of the assets of the separate account are not chargeable with liabilities arising out of any other business of the insurer, provided that the portion of assets of the separate account not chargeable with liabilities arising out of any other business of the insurer shall not exceed the following:

(1) the assets purchased with considerations allocated to the separate account by the contract holder or certificate holder; minus

(2) any benefits paid from such assets; minus

(3) any charges taken from such assets under the terms of the contract or certificate; minus

(4) any contract holder or certificate holder initiated transfers of such assets out of the separate account; plus

(5) the net investment returns earned on the net amount of such assets.

(b) In the case of a separate account contract providing fixed benefits or minimum guaranteed benefits, an insurer shall satisfy the asset maintenance requirements of Insurance Law section 4240(a)(8) if, in the aggregate, amounts held in a designated portion of the general account, a supplemental non-insulated account and applicable separate account are sufficient to satisfy the asset maintenance requirements.

(c) No insurer shall make a sale, exchange or other transfer of assets between any of the insurer's separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, the insurer makes such transfer solely to establish the account or to support the operation of the contracts with respect to the separate account to which the insurer makes the transfer, and unless the insurer makes the transfer, whether into or from a separate account by a transfer of: (1) cash; or (2) securities having a valuation that can be readily determined in the marketplace, provided that the insurer shall obtain the superintendent's approval prior to the transfer of any non-cash assets to or from a separate

account. An insurer may transfer amounts among separate accounts or between any other investment account and one or more of its separate accounts if the superintendent determines that the transfer would not be inequitable.

(d) A separate account may invest the assets allocated to any separate account in the securities of an investment company subject to or registered pursuant to the federal Investment Company Act of 1940, as amended, provided that:

(1) the insurer has satisfied the superintendent that the investment by the separate account is not hazardous to the public or the policyholders, contractholders, or certificate holders of the insurer in this State;

(2) the investments of the investment company comply with the restrictions and limitations on investments by the insurer imposed by Insurance Law section 4240(a)(2) and any other provisions of the law; and

(3) if, subsequent to the purchase of the securities of the investment company, the separate account's investments cease to comply fully with the restrictions and limitations imposed by paragraph (2) of this subdivision, then all separate accounts shall cease investing in the securities of the investment company and existing separate account investments in the securities of the investment company shall be recognized as admitted assets, for the purposes of subdivision (a) of this section, only to the extent that they comply with paragraph (2) of this subdivision.

(e) Expenses shall be allocated to the separate account business in accordance with Insurance Law section 4240(a)(6) and Part 91 of this Title (Insurance Regulation 33).

(f) Conflicts of interest rules under any provision of the Insurance Law or this Title that apply to the officers or directors of insurers shall also apply to the members of the committee, board or other similar governing body of every separate account. No officer or director of any insurer maintaining a separate account or any member of the committee, board or other similar governing body of the separate account shall receive, in addition to a 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.

(g) A separate account contract providing variable benefits other than variable benefits as described in section 50-2.3(a)(7)(iii) of this Subpart shall, with respect to such variable benefits, provide, as an incidental benefit, for the payment of a death benefit in the event of death prior to the annuity commencement date.

(1) The amount of the incidental death benefit shall not be less than the accumulated value of the contract on the date the death benefit is determined in accordance with Insurance Law section 4240(d)(2) and shall not exceed the greater of:

(i) the accumulated value of the contract on the date the death benefit is determined in accordance with Insurance Law section 4240(d)(2); or

(ii) the highest accumulated value at specified anniversaries occurring not more frequently than annually plus premium contributions since such anniversary, less withdrawals since the anniversary; or

(iii) the aggregate amount of contract holder or certificate holder contributions less withdrawals of the contributions made prior to the time of death.

(2) Any death benefit provision that complies with the requirements of this subdivision shall not be subject to the provisions of the Insurance Law applicable to life insurance policies. However, any other death benefit in excess of the benefits set forth in subparagraphs (i), (ii), and (iii) of paragraph (1) of this subdivision provided during the deferred period shall be subject to the provisions of the Insurance Law applicable to life insurance policies. The insurer shall demonstrate to the superintendent's satisfaction that any death benefits in excess of the benefits set forth in subparagraphs (i), (ii), and (iii) of paragraph (1) of this subdivision include nonforfeiture benefits at least as favorable as those provided for in Insurance Law section 4221.

(h) 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 contract holder its accumulated value, if such accumulated value is less than \$5000 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. However, an insurer shall not exercise this option under a variable annuity contract where doing so will result in forfeiture of guaranteed benefits other than guaranteed annuity purchase rates, unless the present value of the guaranteed benefits is less than the accumulated value. Such present value shall be calculated using the guaranteed annuity purchase rates in the contract.

Section 50-2.6 Insurer contributions to separate accounts.

(a) An insurer may, upon the establishment and during the initial stages of a separate account allocate and contribute funds to the separate account as a participant for a limited period and without the purpose of funding annuities, using funds that it might otherwise invest in accordance with Insurance Law section 1405(a)(6) and (8) and invest in the same type of securities as may be purchased for the separate accounts for the purpose of providing for the effective and economical diversification of investments by the separate account and to facilitate the orderly establishment and maintenance of that separate account. The insurer shall have a proportionate interest in any such account, along with all other participating contract holders, to the extent of its participation therein and with respect thereto shall be subject to all the provisions of Insurance Law section 4240 applicable to separate account contract holders generally.

(b) Except as may be permitted in writing by the superintendent, the aggregate amount, net of withdrawals made pursuant to subdivision (d) of this section, so allocated and contributed by the insurer in accordance with subdivision (a) of this section to one or more separate accounts, shall not exceed the lesser of:

(1) \$500,000, plus not more than \$125,000 for each separate account in excess of four to which the insurer so allocates and contributes funds;

(2) one percent of the insurer's admitted assets as of December 31 next preceding; or

(3) five percent of the insurer's surplus to policyholders as of said date.

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

(d) The insurer 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.

Section 50-2.7 Filing and approval of contracts and certificates.

Except as otherwise provided by the superintendent, the filing and approval requirements applicable to individual and group annuity contracts, certificates used in connection with group annuity contracts and individual and group funding agreements shall, to the extent appropriate, apply to individual and group separate account annuity contracts, certificates used in connection with group separate account annuity contracts and individual and group funding agreements, and the requirements of Insurance Law section 3223(d), to the extent appropriate, shall further apply to any allocated group funding agreement whether issued out of a separate account or general account.

Section 50-2.8 Variable income payments.

(a) Every separate account annuity contract that provides for annuity income payments that vary with the investment experience of any separate account shall be subject to the following:

(1) Each separate account annuity contract that provides for annuity income payments that vary with the investment experience of any separate account 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 shall not adversely affect the dollar amount of variable annuity payments that 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 50-2.3(a)(9) of this Subpart, were six and one-half percent at all times from the issue of the contract, the 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 the methods or rates are

determined by the superintendent to be fair, equitable, reasonable and not less favorable to the participants or annuitants; and

(2) Except as otherwise permitted by the superintendent, each authorized insurer issuing separate account annuity contracts that provide for annuity income payments that vary with the investment experience of any separate account shall accumulate an annuitant mortality fluctuation fund or funds over and above the required contract reserves and liabilities, pursuant to a plan for such accumulation that specifies reasonable maximum targets for the fund or funds and is approved by the superintendent as otherwise reasonable. Losses arising from mortality actually experienced shall be charged against the mortality fluctuation fund or funds until the fund or funds are exhausted.

(b) Every individual separate account annuity contract that provides for annuity income payments that vary with the investment experience of any separate account delivered or issued for delivery in this State, and every certificate or other writing furnished by the insurer to an employee in this State under a group separate account annuity contract in connection with the election of a variable annuity that provides for annuity income payments that vary with the investment experience of any separate account shall contain on its first page, in addition to the requirements set forth in Insurance Law section 4240(a)(11), a statement that:

(1) discloses the smallest annual rate of investment return that would have to be earned on the assets of the separate account so that the dollar amount of variable annuity payments will not decrease; or

(2) sets forth the conditions under which the dollar amount of variable annuity payments will not decrease, and a statement of any explicit contractual charges against the assets of the separate account.

(c) Every separate account annuity contract or certificate and any other writing furnished by the insurer to any person in connection with the sale or election of a variable annuity that provides for annuity income payments that vary with the investment experience of any separate account shall contain a concise and clear statement of the method used in computing the dollar amount of variable benefits.

Section 50-2.9 Standard provisions in separate account contracts.

(a) No individual separate account contract providing variable benefits, other than variable benefits as described in section 50-2.3(a)(7)(iii) of this Subpart shall be delivered or issued for delivery in this State unless it contains, with respect to those variable benefits, in substance the following provisions, to the extent that the provisions apply to such contract, or provisions that in the opinion of the superintendent are appropriate to individual separate account contracts and are more favorable to the contractholders:

(1) A provision that there shall be a period of grace, either of 30 days or of one month, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in full force. The contract shall include a

statement of the basis for determining the date as of which a payment received during the period of grace shall be applied to produce the values arising therefrom under the contract;

(2) A provision that at any time within one year from the date of default in making stipulated payments to the insurer, during the life of the annuitant and unless the cash surrender value has been paid, the contract will be reinstated, on the application of the person entitled thereto pursuant to the provisions of the contract, upon payment to the insurer of such overdue payments as required by the contract and of all indebtedness to the insurer on the contract. The contract shall include a statement of the basis for determining the date as of which the amount to cover the overdue payments and indebtedness shall be applied to produce the values arising therefrom under the contract. Where appropriate, the contract may contain a provision requiring, as a condition for reinstatement, evidence of insurability, including good health, reasonably satisfactory to the insurer;

(3) A provision specifying the options available, prior to the commencement date of the annuity, in the event of default in a stipulated payment or of surrender of the contract.

(i) Such options in the event of surrender shall include an option to receive the cash surrender value of the contract. Such options in the event of default in a stipulated payment shall include an option to receive the cash surrender value and an option to receive a paid-up annuity to commence at the maturity date provided in the contract if the contract is not surrendered for cash.

(ii) The contract shall specify the method by which, and the date as of which, the accumulated value of the contract shall be determined and may provide for the deduction therefrom of a surrender charge in arriving at the amount of cash surrender value payable. Such surrender charge shall not be greater than the amount produced by the percentages in the following table, less the premium charge percentage, if any, provided for under the contract:

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8 and Later
8%	8%	7%	6%	5%	4%	3%	0%

(iii) With respect to any additional premium paid under the contract, the insurer may provide for a surrender charge associated with such additional premium, determined as though the contract holder had purchased a separate contract with such additional premium. The contract shall specify whether the surrender charge is applied to the premiums received or the accumulated value or the portion of such amounts associated with a given premium if the contract is premium specific. If the contract is premium specific, the surrender charge shall be applied on a first in, first out basis.

(iv) If the option to receive a paid-up annuity is elected, the accumulated value of the contract in the separate account or accounts of the insurer at the time of default shall, at the option of the contract holder, be transferred to the general account of the insurer to provide a fixed dollar paid-up annuity. Any amounts so transferred may be subject to a

deferral as provided in paragraph (4) of this subdivision. The kind and amount of the paid-up annuity and the conditions of its payment shall be in accordance with the provisions of the contract and the purchase rates stipulated therein subject to paragraph (5) of this subdivision;

(4) In connection with a reservation of right to defer cash surrender payments, any individual separate account contract shall provide, if and to the extent permitted or required under the federal Investment Company Act of 1940, as amended, and any other applicable federal or state law, that the insurer reserves the right, at its option, to defer the:

(i) determination and payment of any cash surrender value for a period of six months after demand therefor with surrender of the contract;

(ii) determination and payment of any cash surrender value for a period of nine months in which installments will be paid; or

(iii) payment of any cash surrender value in accordance with the deferment provisions of the federal Investment Company Act of 1940, as amended; and

(5) A provision that the annuity benefits, at the time they are determined, shall not be less than the benefits that would be paid if the accumulated value were used to purchase any single consideration annuity contract then offered by the insurer to the same class of annuitants.

(b) No group separate account contract providing variable benefits shall be delivered or issued for delivery in this State and no certificate shall be used in connection therewith unless it contains, with respect to such variable benefits, in substance the following provisions to the extent that such provisions apply to such contract or certificate, as the case may be, or provisions that in the opinion of the superintendent are appropriate to group separate account contracts and are more favorable to certificate holders or annuitants, or not less favorable to certificate holders or annuitants and more favorable to contractholders:

(1) A provision that there shall be a period of grace either of 30 days or of one month, within which any stipulated payment to be remitted by the holder to the insurer, falling due after one year from date of issue may be made, during which period of grace the contract shall continue in full force. The contract shall include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values arising therefrom under the contract; and

(2) A provision, with an appropriate reference thereto in the certificate specifying the options available to the certificate holder or an annuitant who contributes to the cost of the annuity, or to the certificate holders or annuitant's beneficiary or beneficiaries in the event of:

(i) the termination of the employee's employment or the termination of the group separate account annuity contract, while the certificate holder or annuitant is alive and prior to the commencement date of the annuity; or

(ii) the death of the certificate holder or annuitant prior to the commencement date of the annuity. Such options shall, in any case, include:

(a) an option to receive a cash payment at least equal to the aggregate amount of the certificate holder's or annuitant's contributions made under the contract, without interest; or

(b) an option to receive a cash payment equal to the accumulated value of the certificate holder's or annuitant's contributions made under the contract.

(c) No separate account contract providing fixed benefits, whether amounts are allocated to the general account or separate account, shall be delivered or issued for delivery in this State unless it contains, with respect to the fixed benefits, the provisions required by law and regulation applicable to contracts funded through the insurer's general account.

(d) No separate account contract providing non-guaranteed index benefits shall be delivered or issued for delivery in this State unless it contains, with respect to the non-guaranteed index benefits, the provisions required by law and regulation applicable to contracts funded through the insurer's general account except that:

(1) the values as specified in Insurance Law section 4223(d), (e), (f), (g) and (i) of any paid-up annuity, cash surrender or death benefits shall be based upon the non-guaranteed index value as defined herein, provided that a separate account contract providing non-guaranteed index benefits may provide incidental death benefits that comply with section 50-2.5(g) of this Subpart and Insurance Law section 4240(d)(2);

(2) the non-guaranteed index value on the maturity date of the index crediting period shall be equal to the actual accumulation amount as defined in Insurance Law section 4223(c)(2) with the following adjustments:

(i) amounts, if any, pursuant to Insurance Law section 4223(c)(2)(C) shall not include any interest but shall include amounts credited to or deducted from the accumulation amount based on an equity index formula specified in the contract meeting the requirements of Insurance Law section 4223(c)(4)(D), except as otherwise provided in paragraph (4) of this subdivision with respect to the length of index crediting periods; and

(ii) the formula may provide for:

(a) a buffer that guarantees there will be no reduction to the accumulated value for initial losses in the index during the index crediting period up to a specified percentage. The buffer percentage shall not exceed 30 percent or be less than 10 percent; or

(b) a floor that guarantees there will be no reduction to the accumulated value for losses in the index during the index crediting period that exceed a specified percentage. The floor percentage shall not be less than 15 percent (i.e., the guarantee may not apply to losses less than 15 percent) nor greater than 25 percent;

(3) the non-guaranteed index value on any date other than the maturity date of the index crediting period shall at least equal either:

(i) the current fair market value of the maturity date guarantees of the segment; or

(ii) any other method of calculation that, in the opinion of the superintendent, provides reasonable equity to terminating and continuing contract holders and to the insurer;

(4) non-guaranteed index crediting periods shall not exceed six years in duration and the cap on the index credit shall not decrease during the index crediting period;

(5) (i) the minimum cap, net of fees, on the index credit shall not be less than:

		INDEX CREDITING PERIOD (YEARS)					
CONTRACT BUFFER	CONTRACT FLOOR	1	2	3	4	5	6
10%	X	5%	10%	15%	20%	25%	30%
30%	X	3%	6%	9%	12%	15%	18%
X	25%	5%	10%	15%	20%	25%	30%
X	15%	3%	6%	9%	12%	15%	18%

(ii) for contracts with buffers between 10 percent and 30 percent and contracts with floors between 25 percent and 15 percent, the applicable minimum cap shall be derived by linear interpolation of the table in subparagraph (i) of this paragraph;

(6) the minimum participation rate shall not be less than 100 percent;

(7) (i) if the index formula provides a step credit subject to a buffer or floor, the minimum step credit rate shall not be less than:

		INDEX CREDITING PERIOD (YEARS)					
CONTRACT BUFFER	CONTRACT FLOOR	1	2	3	4	5	6
10%	X	5%	10%	15%	20%	25%	30%
30%	X	3%	6%	9%	12%	15%	18%
X	25%	5%	10%	15%	20%	25%	30%
X	15%	3%	6%	9%	12%	15%	18%

(ii) for contracts with buffers between 10 percent and 30 percent and contracts with floors between 25 percent and 15 percent, the applicable minimum step credit rate shall be derived by linear interpolation of the table in subparagraph (i) of this paragraph;

(8) the contract may include a reserved right for the insurer to temporarily suspend the availability of all renewal index options if, due to yield on investments or the availability or cost of hedging, the insurer is unable to support the minimum guarantees in this subdivision provided

that the contract offers an account crediting non-market value adjusted fixed benefits or a money market account as an alternative to the index options and further provided that the cover page of the contract and the application disclose the reserved right and explain the circumstances under which the reserved right would be exercised. An unqualified reserved right to suspend all renewal index options shall not be permitted. Contracts issued without this right shall not be amended to add it. No transfer or other charges or negative adjustments shall apply to transfers resulting from the insurer's exercise of this reserved right; and

(9) the cover page of the separate account contract shall include the following disclosure: "THE INDEX RETURN MAY BE POSITIVE, NEGATIVE OR ZERO AND INVESTMENT IN THIS CONTRACT MAY RESULT IN A LOSS OF PRINCIPAL. IN SOME INSTANCES, THE POTENTIAL INVESTMENT LOSS FOR THIS PRODUCT MAY BE SIGNIFICANTLY GREATER THAN THE POTENTIAL INVESTMENT GAIN."

(e) In addition to the requirements of Insurance Law section 3209(b)(2), no separate account contract providing non-guaranteed index benefits shall be delivered or issued for delivery in this State unless, no later than at the time of application, the prospective purchaser has been provided with the disclosure form set forth in Appendix 28 to this Title, which shall be set forth in at least 12-point type. The disclosure form in Appendix 28 shall not be combined with other disclosure, such as a prospectus, except that it may be combined with the disclosure statement required by Insurance Law section 3209(b)(2).

(f) For a separate account contract providing index benefits, the index used in the index crediting formula shall be an independent, external, publicly available index such as the Standard & Poor's 500 Composite Stock Price Index, Dow Jones Industrial Average, NYSE Composite Index, Russell 2000 Index, and EURO STOXX 50 Index. Proprietary indices and those based on portfolios designed to replicate a publicly available index, such as exchange traded funds, are prohibited.

(g) A separate account contract providing guaranteed withdrawal benefits that would extend beyond the scheduled annuity commencement date in the contract, such as guaranteed lifetime withdrawals, shall include a provision that preserves the withdrawal guarantee by:

(1) permitting the contractholder or certificate holder to further defer the annuity payment commencement date; or

(2) providing that the amount of the annuity payments shall not be less than the amount of the guaranteed withdrawals, under the same payment option; or

(3) any other method found acceptable to the superintendent.

(h) A separate account contract providing guaranteed lifetime withdrawal benefits that are determined by applying withdrawal rates (i.e. percentages) to a defined income base shall comply with the following:

(1) withdrawal rates may vary by attained age or by age grouping provided that an age grouping shall not span more than 5 years, except that the final age grouping may apply to all ages 95 and older;

(2) increases in withdrawal rates and/or the defined income base shall be structured so that the resulting amounts of withdrawal benefits increase by age at least as rapidly as shown in the table below (for example, the rate for age 67 shall be at least 106% of the rate for age 62 and the rate for age 82 shall be at least 109% of the rate for age 77) or pursuant to any other approach approved by the superintendent upon determining that the slope of the scale of increases is fair and equitable to contractholders. For benefits covering joint lives, the age of the younger life would be used; and

Age Group	% Increase
60 - 64	-
65 - 69	6%
70 - 74	7%
75 - 79	8%
80 - 84	9%
85 - 89	10%
90 - 94	12%
95+	14%

(3) withdrawal rates shall not decrease due to reduction or depletion of the contract's accumulated value and the amount of the withdrawal benefit shall not decrease due to reduction or depletion of the contract's accumulated value except:

(i) for an annuity providing only fixed benefits, reduction of the accumulated value by the contractholder prior to commencement of guaranteed withdrawal payments may result in reduction of the withdrawal benefit since the withdrawal benefit is, in accordance with Insurance Law section 4223, based on the accumulated value;

(ii) after commencement of guaranteed withdrawal payments, the contract may provide for a proportionate reduction of the withdrawal benefit for withdrawals in excess of guaranteed withdrawals; and

(iii) in such other instances as approved by the superintendent upon finding that the decrease is not misleading and the decrease is fair and equitable to contractholders.

(i) No separate account contract shall include investment funds that purport to provide benefits, features, or investment strategies that are, in the opinion of the superintendent, similar to non-guaranteed index benefits with buffer and floor features as discussed in this section.

Section 50-2.10 Illustrations of benefits payable under separate account contracts.

Illustrations of benefits payable under any separate account contract, which are incorporated in or attached to the contract or are utilized in advertising or sales material relating to the 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 the hypothetical rates is not in conflict with applicable requirements of the United States Securities and Exchange Commission. If any hypothetical rate of investment return is used for illustration purposes, a corresponding additional illustration also shall be included using a hypothetical rate of investment return at least at the same interval below the pivotal rate of investment return. As used in this section, the pivotal rate of investment return is the smallest annual rate of investment return, as defined in section 50-2.3(a)(9) of this Subpart, 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 shall be used in any illustration.

Section 50-2.11 Required reports.

(a) Each insurer issuing a separate account contract shall at least once in each contract year mail or deliver to every separate account annuity contractholder, addressed to the contractholder's last address known to the insurer or delivered in person or electronically in a manner agreed to between the insurer and contractholder, a statement or statements reporting the investments held in the separate account and, in addition, in the case of contracts under which benefit payments have not yet commenced, a statement reporting as of a date not more than four months prior to the date of mailing or delivery, the number of accumulation units credited to such contracts, and the dollar value of each unit or the total value of the contractholder's account, except that such statements need not be mailed or delivered with respect to contracts that have been issued not more than four months prior to the date of the mailing or delivery. Contractholder, as used in this subdivision, shall include a certificate holder who has accumulation units credited to the certificate holder's account. Such statement may be distributed to the certificate holder by providing the statements to the contractholder pursuant to a bona fide plan that provides for the further distribution of the statement or statements to the certificate holders.

(b) Each insurer issuing any separate account contract shall submit annually to the superintendent, in such form as the superintendent may prescribe, a statement of the business of its separate account or accounts.

Section 50-2.12 Separate accounts of foreign and alien insurance companies.

No authorized foreign insurer or United States branch of an alien insurer shall deliver or issue for delivery within this State any separate account contract unless the insurer shall comply substantially with the provisions of this Subpart related to the method of operation of separate accounts that, in the judgment of the superintendent are reasonably necessary to protect the interests of the people of this State. The insurer shall file with the superintendent a statement as to the method of operation of its separate accounts used in connection with separate account contracts delivered or issued for delivery in this State. The insurer shall, upon request of the superintendent,

also file with the superintendent a statement as to the method of operation of any other separate account.

Section 50-2.13 Separability clause.

If any provision of this Subpart shall be held invalid, the remainder of the Part shall not be affected thereby.

Section 50-2.14 Violations.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this State and shall be deemed to be a trade practice constituting a determined violation, as defined in Insurance Law section 2402(c), except where such act or practice shall be a defined violation, as defined in Insurance Law section 2402(b), and in either such case shall be a violation of Insurance Law section 2403.

A new Appendix 28 is added to Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York to read as follows:

NON-GUARANTEED INDEX ANNUITIES (AKA STRUCTURED ANNUITIES,
REGISTERED INDEX ANNUITIES, BUFFER ANNUITIES, SHIELD® ANNUITIES, AND
FLOOR ANNUITIES)

The following questions aim to help you understand how non-guaranteed index annuities work. They also highlight some of the risks with this type of annuity. You can use these questions when you talk with an insurance producer about whether this type of annuity is right for you. This is general information. Since there may be variations in how insurance companies design their annuities, you should ask the insurance producer to explain the details of the annuities you are considering buying and how the questions below relate to those annuities.

You should know:

- You could lose money.
- In exchange for some loss protection, you may sacrifice potential gain.
- In some instances, the potential loss may be much greater than the potential gain.
- There may be limits on gains that could delay or prevent you from earning back losses.

1. How does a non-guaranteed index annuity differ from a fixed annuity or a variable annuity?

- The chart below shows some differences. Sometimes an annuity may offer a combination of fixed, fixed index, non-guaranteed index, or variable investment options within the same contract.

	Fixed Annuity	Fixed Index Annuity	Non-guaranteed Index Annuity	Variable Annuity
Direct Investment in Securities	No	No	No	Yes
Gain/Loss	Gain Only	Gain Only	Gain or Loss	Gain or Loss
Potential Loss of Principal	No	No	Yes	Yes
Limit on Gains	Yes Interest you earn is declared by the insurance company each year.	Yes Interest you earn may be limited by a cap.	Yes Interest you earn may be limited by a cap.	No
Protection against Loss	Yes	Yes	Partial Protection (Buffer or Floor)	No

2. Do I benefit from dividends issued by companies that are part of an index with a non-guaranteed index annuity?

- No, non-guaranteed index annuities often use a version of an index that does not include these dividends when determining index performance. So, the amount the insurance company credits to your account may be based on lower gains than if you invested in an index fund (through a variable annuity, for example). For example, over the ten-year period ending December 31, 2020, the returns on the S&P 500 Index without dividends were lower by an average of 2% each year compared to the same index with dividends. The returns on indexes other than the S&P 500 are also lower without dividends.

3. Can I lose money with a non-guaranteed index annuity?

- Yes, the return may be positive, negative or zero. As a result, investment in this product may result in a loss of principal. In some instances, the potential loss may be significantly greater than the potential gain. See Question 8 below for examples. Fees in the contract can further reduce what you earn.
- The non-guaranteed index annuity generally offers greater potential for gain but less loss protection than a fixed annuity or fixed index annuity. Fixed annuities and fixed index annuities guarantee a minimum interest rate. They also have a guarantee of principal. If you are concerned about losing principal, ask the insurance producer about the fixed and fixed index annuities the producer offers.

4. How does a “buffer” work?

- With a buffer, the insurance company will not reduce your account value if the loss in the index is within a stated percentage. However, the insurance company will reduce your account value for additional loss in the index beyond that initial percentage.
- For example, if the annuity has a buffer against loss of 10%, that means the insurance company will not reduce your account value if the loss in the index is between 0% and 10% over the period specified in your contract (“index period”). However, if the index loses more than 10%, the insurance company will reduce your account value. If the index loses 30%, for example, the insurance company will reduce your account value 20%. Put another way, with a 10% buffer, the most you could lose for the index period is 90% if the index loses 100% over the index period.
- You may give up potential gain in order to have this loss protection. See Questions 7 and 8 below.

5. How does a “floor” work?

- With a floor, the insurance company will reduce your account value for any loss in the index up to a stated percentage. The insurance company will not further reduce your account value for additional loss in the index beyond that initial percentage.
- For example, if the annuity has a floor against loss of 20%, that means the insurance company will reduce your account for loss in the index between 0% and 20% over the index period. Loss beyond 20% will not be subtracted from your account. Put another way, with a 20% floor, the most you could lose for the index period is 20%.
- You may give up potential gain in order to have this loss protection. See Questions 7 and 8 below.

6. What is a “step credit”?

- For annuities that don’t use a step credit, the amount the insurance company adds to your account depends on how much gain the index returns. The greater the gain, the greater the percentage credited to your account, up to any stated cap. However, a step credit works differently. With a step credit, the insurance company will credit your account the same preset percentage regardless of how much the index gains.
- For example, if the step rate is 6%, then the insurance company will credit you 6% if there is any gain in the index. If the index returns 1%, you still get 6%. However, if the index returns 15%, you still get 6%.
- Some insurance companies will also credit the step credit if the index return is zero.
- If the index loses value, your account value will be reduced, subject to any buffer or floor you have on your annuity.

7. Are there limits on my potential gain with a non-guaranteed index annuity?

- Yes, insurance companies often limit the amount of money you can earn with a non-guaranteed index annuity.
- A “cap” is a common type of limitation. Caps limit the amount of gain. For example, if the insurance company sets a cap of 10%, then 10% is the most the insurance company will credit your account for the index period, regardless of how well the index performs. A step credit may also limit your potential gain.

- At the same time, the amount of loss protection from a buffer or floor is also limited. The cap levels will often differ based upon the level of buffer or floor protection.
- In some instances, the potential loss may be much greater than the potential gain. For example, if there is a cap on gain of 10% and a buffer against loss of 10%, that means that the most you could earn is 10% and the most you could lose is 90%, if the index loses 100% of its value over the index period.
- Example 1: Consider an annuity with a 10% cap and a 10% buffer.

Index Movement During the Index Period	Impact on your Account Value
Index Gains 40%	10% Gain
Index Loses 40%	30% Loss

- Example 2: Consider an annuity with a 10% cap and a 15% floor.

Index Movement during the Index Period	Impact on your Account Value
Index Gains 40%	10% Gain
Index Loses 40%	15% Loss

8. Could the limits on potential gain delay or prevent me from recouping losses?

- Yes, in some instances the potential loss may be much greater than the potential gain. This can make it difficult to earn back losses.
- For example, consider the table below that shows a series of losses and gains, without fees, over a four-year period with an initial \$100,000 contribution to the annuity. Fees, such as variable annuity separate account fees, underlying fund fees, and other charges can impact performance.

Year	Index Movement	Variable Annuity	Buffer Annuity 7% Cap 10% Buffer	Floor Annuity 7% Cap 15% Floor	Floor Annuity 7% Cap 25% Floor
1	20% Loss	\$80,000	\$90,000	\$85,000	\$80,000
2	25% Gain	\$100,000	\$96,300	\$90,950	\$85,600
3	20% Loss	\$80,000	\$86,670	\$77,308	\$68,480
4	25% Gain	\$100,000	\$92,737	\$82,719	\$73,274
Overall		0% Break Even	\$7,263 Loss	\$17,281 Loss	\$26,726 Loss

- If you want exposure to the stock market or other investments included in an index and are willing to go without the limited loss protection in order to have greater potential gain, ask the insurance producer about the variable annuities the producer offers.

9. Will the same caps and index options always be available after the initial index period?

- Not always. The insurance company can change the caps when it renews the index options at the end of each index period. Caps could be higher or lower.
- The insurance company may temporarily suspend renewal index options (both the indexes offered and the length of the options). This can happen if market conditions make it difficult for the company to offer the options. Surrender charges may apply if you surrender the contract.

10. What if I want to take money out before the end of the index period?

- You may not be able to move your money out of an index option to another investment within the annuity before the end of the index period.
- You can take all or some of your money out of the annuity contract, but you may receive less than your initial investment in the index option. This may be true even if the index movement has been positive since your start date. The amount you receive may be less than the amount you would receive if you had waited until the end of the index period. Surrender charges and other adjustments to your account value may also apply.



KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the foregoing is the Fourth Amendment to Part 50 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 47), entitled Separate Accounts and Separate Account Contracts, signed by me on August 16, 2022, pursuant to the authority granted by Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 1106, 3201, 3222, 4240, and 4525, to take effect upon the publication of the Notice of Adoption in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on March 16, 2022. No other publication or prior notice is required by statute.

Signed copy filed with Department of State
Adrienne A. Harris
Superintendent of Financial Services

Date: August 16, 2022